

COMMITTEE STATUS CONFERENCE
AND HEARING ON MOTIONS
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 99-AFC-2
Three Mountain Power)
Project)
(Ogden Energy, Inc.))

LIONS HALL
37006 MAIN STREET
BURNEY, CALIFORNIA

MONDAY, DECEMBER 20, 1999
5:00 p.m.

Reported By:
Debi Baker
Contract No.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Robert A. Laurie, Commissioner, Associate Member

Cynthia Praul, Commissioner Advisor

Edwin J. Bouillion, Jr. Hearing Officer

PUBLIC ADVISER

Roberta Mendonca

STAFF PRESENT

Richard C. Ratliff, Senior Staff Counsel

Stanley Valkosky

Chris Tooker

Tuan Ngo

Linda Bond, Consultant

Richard Sapuder, Consultant

APPLICANT

Michael H. Zischke, Esq., Attorney

Ann MacLeod, Attorney

Lisa Cottle, Attorney

Martin McFadden, Jr., Three Mountain Power, LLC

Les Toth, Project Manager

Danielle Timman, Community Liaison

INTERVENORS

Marcella Crockett, Burney Resource Group

Jim Crockett, Burney Resource Group

Karen Scholls, Burney Resource Group

INTERVENORS

Bob Scholls, Burney Resource Group

Andrew Early, Burney Resource Group

Claude D. Evans, Johnson Park

David A. Nelson, California
Department of Parks and Recreation

Jerry Abe Hathaway
Hathaway Burney Ranch FLP

Lizanne Reynolds, CURE

ALSO PRESENT

Michael Kussow, Shasta County
Air Quality Management District

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Introductions	1
Opening Comments	6
Procedural Discussion	8
Discussion of Motions	9
A. Motion filed October 22, 1999 by Burney Resource Group	
Marcella Crockett Burney Resource Group	11
Michael Zischke Applicant	29
Richard Ratliff, CEC	36
Linda Bond, Consultant	37
Rich Sapuder, Consultant	41
Other Intervenors:	
Claude D. Evans	47
David Nelson	
CDPR	48
Lizanne Reynolds	
CURE	57
Questions and Comments	61
B. Motion filed October 25, 1999 by Claude D. Evans	
Claude D. Evans	65
Michael Zischke, Applicant	67
Richard Ratliff, CEC staff	69
Other Intervenors:	
Marcella Crockett, BRG	70

I N D E X

	Page
C. Motion filed November 2, 1999 by Burney Resource Group	
Marcella Crockett, BRG	71
Michael Zischke, Applicant	77
Richard Ratliff, CEC staff	87
Other Intervenors:	
Claude D. Evans, Johnson Park	89
David Nelson, CDPR	89
Questions and Comments	93
D. Motion filed November 10, 1999 by Claude D. Evans	
Claude D. Evans, Johnson Park	117
Michael Zischke, Applicant	115
Other Intervenors:	
Marcella Crockett, BRG	116
Discussion Regarding Scheduling, Coordination, Future Events, PSA	117
Comments by Commissioners	133
General Public Comment on Matters Previously Discussed	
Bob Scholls	136
Michael Rodriguez	138
Adjournment	140
Certificate of Reporter	141

1 P R O C E E D I N G S

2 5:00 p.m.

3 PRESIDING MEMBER KEESE: I'm Bill Keese,
4 Presiding Member on this case. On my left is
5 Robert Laurie. Bob Laurie is the other member of
6 the committee. We are the committee that is
7 hearing this case.

8 We are assisted this evening by Ed
9 Bouillion, who is going to conduct the hearing.
10 He's our Hearing Officer. And on my right is
11 Cynthia Praul, my advisor, who also assists me in
12 working on the case.

13 We expect Roberta Mendonca, the Public
14 Adviser, to be here. We had expected her to be
15 here. If anybody -- she probably will be. If
16 somebody is seeking advice, Mr. Stan Valkosky is
17 at the back table and can give general advice on
18 how one might participate in this hearing. I know
19 Roberta has worked with quite a few people up
20 here, but if you have any general questions, until
21 she gets here Stan will be here.

22 At this time I'd like to ask the other
23 individuals working in this case to introduce
24 themselves.

25 First, the Applicant.

1 MR. ZISCHKE: I'm Mike Zischke. I am
2 Counsel for Three Mountain Power, and will be
3 speaking on the motions.

4 PRESIDING MEMBER KEESE: And who --
5 okay.

6 MR. TOTH: I'm Les Toth, I'm the Project
7 Manager.

8 MR. McFADDEN: I'm Marty McFadden, I'm
9 the Vice President of Three Mountain Power.

10 MS. MacLEOD: Ann MacLeod, White and
11 Case, attorneys for Three Mountain Power.

12 MS. COTTLE: I'm Lisa Cottle, also from
13 White and Case, attorneys for Three Mountain
14 Power.

15 MS. TIMMAN: Danielle Timman, community
16 liaison.

17 PRESIDING MEMBER KEESE: Thank you.

18 Mr. Ratliff, would you like to introduce
19 the staff?

20 MR. RATLIFF: Yeah. With me is Mr.
21 Chris Tooker, on the far end here, on the right.
22 And Tuan Ngo, on my right. I'm Dick Ratliff,
23 staff counsel.

24 And, I'm sorry, I --

25 MR. SAPUDER: Richard Sapuder.

1 MS. BOND: I'm Linda Bond,
2 hydrogeologist consultant to the CEC staff.

3 PRESIDING MEMBER KEESE: Thank you.

4 (Inaudible asides.)

5 PRESIDING MEMBER KEESE: Okay. We're
6 going to try to handle that. The -- these are
7 recording microphones. The only amplification we
8 have, and Mr. Ratliff has at his -- okay.

9 Can you hear this one? Can you hear it?

10 I've got a long cord, unless you want to
11 speak real loud. Okay.

12 The other procedural instruction is that
13 this is being recorded off these microphones, so
14 anyone who chooses to speak, we'll ask you to
15 speak near one of these, and find a way that we
16 can all hear. And I'm willing to share this
17 microphone, since it seems to be the only one
18 operating out there.

19 For the Intervenor, the Burney Resource
20 Group. Do you want to introduce yourself for the
21 record, please.

22 MS. CROCKETT: Marcella Crockett,
23 representing the Burney Resource Group.

24 MR. CROCKETT: And I'm Jim Crockett,
25 with the Burney Resource Group.

1 MS. SCHOLLS: Karen Scholls, with the
2 Burney Resource Group.

3 MR. NELSON: Dave Nelson, California
4 State Parks.

5 MR. EVANS: Claude Evans, Johnson Park.

6 PRESIDING MEMBER KEESE: Mr. Evans.

7 MR. EVANS: Yes. Just an interested
8 citizen.

9 PRESIDING MEMBER KEESE: Mr. Evans, is
10 -- you are an Intervenor?

11 MR. EVANS: I'm an Intervenor.

12 PRESIDING MEMBER KEESE: Yeah. We're
13 going to -- I'm sorry. We're going to have to ask
14 you to come up to the microphone. Are you all
15 right so far? Debi, are you all right so far, or
16 do you -- yes. Let's start with the Burney
17 Resource Group, and speak into the microphone.

18 MS. CROCKETT: Marcella Crockett, for
19 the Burney Resource Group. I don't believe the
20 mic's on.

21 PRESIDING MEMBER KEESE: That's a
22 recording microphone. You've just got to talk
23 loudly into that one.

24 MS. SCHOLLS: Okay. Karen Scholls,
25 Burney Resource Group.

1 PRESIDING MEMBER KEESE: And, Mr.
2 Crockett, we also had --

3 MR. CROCKETT: I'm Jim Crockett, with
4 the Burney Resource Group.

5 PRESIDING MEMBER KEESE: Thank you. Is
6 that the -- that's the Burney Resource Group;
7 correct?

8 Then I'll ask Mr. Evans to introduce
9 himself, please.

10 MR. EVANS: I'm Claude Evans, out of
11 Johnson Park.

12 PRESIDING MEMBER KEESE: And then the
13 California Department of Parks and Rec.

14 MR. NELSON: Dave Nelson, Intervenor,
15 representing California State Parks.

16 PRESIDING MEMBER KEESE: Thank you.
17 Hathaway Burney Ranch? Not here yet.
18 California Unions for Reliable Energy?
19 Lizanne.

20 MS. REYNOLDS: Lizanne Reynolds, Adams,
21 Broadwell, Joseph and Cardozo, attorney for CURE.

22 PRESIDING MEMBER KEESE: Thank you. And
23 I believe that's all the Intervenor at this time.
24 Is there any member of the public who is
25 interested in identifying themselves at this time?

1 This will not preclude you speaking later.

2 You'll have to -- I'll ask you to speak
3 to the microphone here.

4 MR. EARLY: My name is Andrew Early, I'm
5 part of the Burney Resources Group, too.

6 PRESIDING MEMBER KEESE: Thank you.

7 MR. SCHOLLS: My name is Robert Scholls,
8 I'm part of the Burney Resource Group.

9 PRESIDING MEMBER KEESE: Thank you.

10 The committee has a schedule tonight
11 that I believe you've seen, the status conference.
12 It's a notice dated November 19th, 1999. Notice
13 of the location was provided to over 300 people
14 appearing on various mailing lists for this
15 proceeding, and a media advisory was also provided
16 to local electronic and print news media.

17 The purpose of tonight's conference is
18 to discuss the items set forth in the notice.

19 These are, first, the status of
20 discovery, i.e., data responses and requests;
21 second, scheduling matters, including dates for
22 required determinations by other agencies; third,
23 coordination with other agencies; fourth, current
24 and future events, including release of staff's
25 Preliminary Assessment of the project; and other

1 relevant matters including motions.

2 Four motions have recently been filed.
3 Presently pending are, number one, a motion filed
4 October 22nd, 1999, by the Burney Resource Group,
5 requesting the committee to order the Applicant to
6 conduct a five-year study of the Burney Basin
7 aquifer prior to certification.

8 Number two, motion filed October 25th,
9 1999, by Claude D. Evans, requesting the committee
10 to order the Applicant to conduct a five-year
11 study of the Burney Basin aquifer after
12 certification.

13 Number three, a motion filed November
14 2nd, 1999, as amended by its motion filed November
15 9th, 1999, by the Burney Resource Group,
16 requesting the committee to order the Applicant to
17 conduct a one-year study of the Burney area air
18 quality. That's an air study.

19 And number four, a motion filed November
20 10th, 1999, by Claude D. Evans, requesting
21 consideration of plan to partially mitigate dust
22 particles.

23 We will discuss these motions to the
24 extent the parties are prepared to proceed.

25 At this time would you like to discuss

1 the procedure. Mr. Bouillion will discuss our
2 procedures.

3 HEARING OFFICER BOUILLION: All of the
4 participants in this room should keep in mind that
5 this is a status conference only, as well as
6 argument on the motions. We're not here to take
7 any new evidence at this time. The evidence that
8 is going to apply to the motions has been
9 previously submitted in written form by way of
10 declaration and exhibits to those declarations.

11 You should also remember that this
12 process for certification, or non-certification,
13 for that matter, of this power plant. Everyone
14 should remember that the certification process
15 will last for many months, and there will be many
16 opportunities to raise other objections that
17 people have to the various features of this plant.

18 The Applicant, the staff, and the formal
19 Intervenor will each be given an opportunity to
20 address the matters that Mr. Keese previously
21 mentioned, beginning with the motions. Please
22 remember that we are hearing argument on the
23 motions, not evidence.

24 After the formal presentations, we will
25 receive public comment. Anyone in this room that

1 has anything to say about the matters that we talk
2 about during these motions, or during the talk
3 about -- the discussion about the schedule, or any
4 other matters that come up may be commented upon
5 by any member of the public at the conclusion of
6 this hearing.

7 If we see a lot of comment we may have
8 to limit the amount of time you get, but with the
9 size of this group that probably will not be
10 necessary.

11 At this time I'd like to begin with the
12 first motion, which is the motion of the Burney
13 Resource Group to conduct a five-year water study
14 prior to certification. Are the parties prepared
15 to discuss it?

16 MS. CROCKETT: Yes.

17 HEARING OFFICER BOUILLION: All right.
18 As you can see on the agenda, and I put a bunch of
19 agendas down at the end on a table, each of those
20 agendas contain the order of presentation. In
21 each case, it is going to be the person, the
22 proponent of the motion, whoever filed the motion
23 will go first, whether it's the Burney Resource
24 Group or Mr. Evans. The second will be the
25 Applicant will have a chance to respond. Then

1 we'll ask for the staff comments, if any, and then
2 comments from all of the other Intervenors.

3 We will then proceed to the second
4 motion, the third motion, the fourth motion, and
5 then we will close the matter of the motions and
6 discuss other matters.

7 So -- yes.

8 MS. CROCKETT: Question on procedure
9 during this. Since we are --

10 PRESIDING MEMBER KEESE: Well, let's
11 see. Okay. Just speak up, we'll make sure --
12 name first, and then speak up.

13 MS. CROCKETT: Marcie Crockett, for the
14 Burney Resource Group, asking about a procedural
15 question.

16 Since we are doing an argument on the
17 motions, and there are certain data that have
18 already been submitted, is it appropriate at this
19 time to distribute it for the staff and
20 Commissioners to view what we're discussing,
21 pictures, things that have been submitted, or do
22 you not want that to happen during the argument
23 for the motion?

24 HEARING OFFICER BOUILLION: It's my
25 understanding that everything has already been

1 submitted, and that each of the Commissioners has
2 a package of the motion itself and all of the
3 declarations that have been submitted in support
4 of it, as well as pictures.

5 We're not here to take any new evidence.

6 MS. CROCKETT: No. No, no, no. I
7 understand that. I just didn't understand whether
8 or not I should be -- if I'm discussing certain
9 areas where the pictures would be relevant, having
10 them again for staff and Commissioners to look at
11 would be inappropriate.

12 HEARING OFFICER BOUILLION: That's
13 correct.

14 PRESIDING MEMBER KEESE: Using an --
15 pointing to an exhibit that you have is fine, but
16 we -- we've read -- I have read all the materials
17 that have been submitted by all the parties.

18 HEARING OFFICER BOUILLION: Would you
19 please proceed.

20 MS. CROCKETT: Okay. My name is Marcie
21 Crockett, and I'm proceeding to support our motion
22 for a five-year study on the Burney aquifer
23 preceding construction.

24 As you have seen by our motion, we have
25 listed a tremendous amount of state laws,

1 policies, beliefs in this motion, and I'd like to
2 go over a little bit of them and clarify our
3 position on them.

4 Under Title 20, Section 1748, subsection
5 (a), it states that the Applicant must identify
6 the source water and have it analyzed for chemical
7 and physical properties. In the Applicant's
8 response to our petition, they state they have
9 bracketed the water and that using bracketed water
10 for identification of chemicals' constituents and
11 physical properties of the water should be
12 sufficient.

13 The Applicant still has not actually
14 identified the source water. And as is stated in
15 our petition, the source water determines the
16 amount of chemicals needed to prepare it for use
17 in the cooling towers, and will determine the
18 levels of contaminants in the water -- water
19 discharge.

20 All of Three Mountain's calculations, as
21 they said earlier, are based on bracketed water
22 qualities and taking an average when, in fact,
23 their water quality could be quite better than
24 anticipated or much worse than the average used
25 for modeling. And to me, the word modeling refers

1 to lack of physical data. Everything has been
2 referred to modeling.

3 So we feel it's very important for our
4 motion that they go ahead and identify the source
5 water with actual drilling and pumping for the
6 chemical properties of the water that will be used
7 in the cooling tower.

8 Their water budget is overly simplistic.
9 It does not take into account that the studies
10 done by Drs. Rose and Davison at the Lawrence
11 Livermore National Laboratory documents that 50
12 percent of the recharge areas are not within the
13 delineated boundary of the Burney Basin as
14 proposed by the submitted maps and used by the
15 Applicant to support water flows into the basin
16 for well recharge rates impacts of consumptive use
17 on the groundwater table.

18 Three Mountain Power does not accept
19 that the water flowing from these recharge areas
20 goes into the Hat Creek aquifer which has the main
21 flow volume, as described by Drs. Rose and
22 Davison, and supported by the radio-isotope
23 tagging, and as further stated on page 229 of Dr.
24 Rose's study, that the Burney Group in particular
25 suggests minimal interaction with volcanic

1 atmospheric carbon dioxide. Groundwater flow
2 paths in this part of the basin appear to be
3 largely independent of the central aquifer system
4 underlying the Hat Creek Basin.

5 Rose and Davison measured flow volumes
6 and quantified their results in 1997. The study
7 is lengthy, it's complicated, and it is very
8 complex. But it goes a long way in identifying
9 some crucial questions that have not been
10 addressed. Whether or not the water going over
11 the falls is, in fact, coming through the basin,
12 or is, in fact, circling the basin, mixing just in
13 front of the falls, and going over the falls.

14 This assumption is critical to the
15 Applicant's water budget. If, in fact, the water
16 going over the falls is coming through the basin,
17 their water budget is pretty accurate. If it is
18 not, their assumption of the amount of water that
19 is there for usage, the impacts on that water
20 table are totally irrelevant. We have no data to
21 confirm this.

22 In a conversation with Dr. Fox just
23 before coming here, she wanted me to stress that
24 there have been no aquifer studies done on the
25 Burney Basin. Dr. Rose and Dr. Davison's studies

1 for the Lawrence Livermore Labs were done on the
2 Hat Creek Basin. There were very few samples
3 taken from the Burney aquifer system, and there
4 were surface water samples and some well samples
5 from the Burney Water District. There was no
6 drilling, there was no core samples pulled for
7 fracture studies, there was no methodology on the
8 Burney Basin created. Basically, the Burney Basin
9 is still an unknown entity.

10 All of the other studies listed by the
11 Applicant, CH 2M Hill, the Lawrence and Associates
12 out of Redding, are all extremely superficial
13 studies. There have been no field studies. There
14 have been no pumping studies done on the Burney
15 aquifer. And to go into a plant situation that
16 will be drawing three million gallons a day of
17 water from the ground without knowing the well
18 interference, the range of well interference, the
19 impacts on the local people, our group just finds
20 it totally unacceptable. It just boggles us.

21 But Dr. Fox wanted me to stress that
22 Drs. Davison and Rose's calculations are basically
23 supporting a mixing calculation at the falls, and
24 not a coming through the basin total usage.
25 According to Dr. Davison's and Rose, the Applicant

1 has made an error in calculating the volume over
2 the falls by as much as 25 percent. Then if there
3 is not all this water coming through the basin, as
4 I said earlier, but around and mixing at the
5 falls, the impacts of pumping increase
6 substantially.

7 And as an example of this possible
8 problem, during the drought years of '88 through
9 '92, Dr. Davison's and Rose measured the aquifer,
10 the Hat Creek aquifer. It dropped by 50 percent.
11 There was a seven percent drop in the flow
12 annually. There was a direct correlation to the
13 amount of precipitation in the recharge areas, and
14 that is another area of extreme contention. Drs.
15 Davison and Rose claim the recharge area by radio-
16 isotope tagging and carbon radio-dating fall in
17 the Clover Mountain and the Southern Lassen
18 highlands. Those are outside the boundaries of
19 the recharge rate that -- the recharge area that
20 the Applicant has drawn in the maps submitted to
21 the committee.

22 So they have, according to Dr. Davison
23 -- get my glasses on here -- they have mis-gauged
24 the recharge at 50 percent where it should be, and
25 they're assuming an 87 percent recharge by

1 precipitation. There are a lot of errors in these
2 studies that are being -- well, not in the
3 studies, but in the suppositions of what the
4 studies show. It is there. It just has to be dug
5 out.

6 Dr. Fox had spoken with Dr. Davison on
7 several occasions, and he's clarified that, and it
8 is in her declaration that is before the
9 committee. There were measured results by Dr.
10 Davison and Dr. Rose on mass flows, lack of
11 storage, and reaction to the aquifer during wet
12 and dry years.

13 In the Applicant's rebuttal, or response
14 actually to our motion, they are talking about a
15 conductivity and a porosity from 25 to 35 percent
16 for the rock porosity in the aquifer. According
17 to Dr. Davison that is way in excess of what is
18 normally assumed for an aquifer. Thirty percent
19 is maximum, and to be on the safe side midline he
20 said that he would only assume a 20 percent
21 porosity. And when you do an interference based
22 on the 20 percent -- 20 percent porosity, you only
23 get a well interference at five-hundredths of a
24 mile, which is -- which is minimal. It is really
25 minimal, and we agree to that.

1 But if you take a stronger and even more
2 conservative approach on porosity and go down to
3 one percent porosity, which is quite possible, you
4 have a well interference of five square miles.
5 There is a tremendous difference. And to assume -
6 - assume a porosity of 25 to 35 percent without
7 documentation is dangerous. You have no idea what
8 the impacts on the wells and the well interference
9 is going to be without knowing the porosity.

10 And again, as Dr. Fox wanted me to
11 stress, there hasn't been any drilling. We do not
12 have any test wells.

13 COMMISSIONER LAURIE: I want to ask her
14 a question.

15 PRESIDING MEMBER KEESE: Commissioner
16 Laurie has a question here.

17 MS. CROCKETT: Sure.

18 COMMISSIONER LAURIE: Question, Ms.
19 Crockett. Thank you. Again, for introduction
20 purposes, my name is Robert Laurie, the Second
21 Member of the committee.

22 Understanding your argument, which goes
23 to the substance of the water issue, its source,
24 its water availability, I'm interested in your
25 thoughts as to the appropriate timing of the

1 motion. That is, it's been explained that
2 evidence has not yet been submitted. That is, we
3 are not in the evidentiary phase of the hearing.
4 And therefore, we cannot make an ultimate
5 determination of the water availability issue.

6 I'm interested in your opinion,
7 therefore, as to how we can take action
8 procedurally in response to your motion, because
9 your motion is based ultimately on the evidentiary
10 -- the amount of evidence available to go to the
11 substance of the question.

12 MS. CROCKETT: So if I understand your
13 question correctly, you want to know whether I
14 want this study prior to construction, or --

15 COMMISSIONER LAURIE: Well, no. My
16 understanding is you are -- your motion seeks a
17 study prior to certification.

18 MS. CROCKETT: Right.

19 COMMISSIONER LAURIE: The question is,
20 given the fact that we are not at the phase of the
21 proceeding where we are taking evidence on the
22 substance of these issues, can you explain your
23 expectation of how we issue a decision without
24 going to the substance of the question of water
25 availability, and -- and why your motion is thus

1 not premature.

2 (Inaudible asides.)

3 MS. CROCKETT: We were advised that if
4 we had a concern about availability of water for
5 the power plant, that we should put that into the
6 form of a motion to seek studies -- to seek
7 studies on that availability prior to
8 construction. I'm not sure that I'm
9 understanding, that you're saying that this motion
10 is now inappropriately timed?

11 PRESIDING MEMBER KEESE: Let me take a
12 crack at it.

13 We're at the beginning stages only of
14 this process. And after we have taken evidence on
15 air, water, and many items, then we will be able
16 to -- Commissioner Laurie and I will be able to
17 make a decision as to whether there is an impact
18 or not; if there is an impact, what the mitigation
19 should be. But we're going to -- we're going to
20 take evidence from all the parties. We're going
21 to have hearings and receive that evidence.

22 And if I understand, his question is are
23 you suggesting that we should make a decision to
24 order somebody to do a five-year study before we
25 get the evidence, or would it not be more

1 appropriate after we have received the evidence,
2 your evidence, and their evidence, for us then to
3 consider such a motion.

4 Is that -- does that come close to your
5 thoughts?

6 COMMISSIONER LAURIE: Yes, Chairman
7 Keese. My -- my concern is that the argument --
8 the argument goes -- the argument is being
9 submitted to us in the form of evidence, even
10 though it's not sworn testimony. And I have a
11 concern about how that's going to be reflected in
12 the record, and how we can make a decision on
13 those facts --

14 FROM THE AUDIENCE: Excuse me. You're
15 going to have to talk louder. Nobody back here
16 can hear you, so either stand up and speak louder,
17 or --

18 COMMISSIONER LAURIE: Right.

19 FROM THE AUDIENCE: -- you know, this is
20 a --

21 COMMISSIONER LAURIE: No, no, no.
22 That's fine. I appreciate that.

23 (Inaudible asides.)

24 COMMISSIONER LAURIE: The issue is
25 whether -- why don't you let me know when you're

1 ready to proceed.

2 The issue, to me, is a question of
3 timing of the motion. It's a procedural issue. I
4 believe you are asking the committee to make a
5 substantive decision on the issue of water
6 availability. And I question the propriety of the
7 timing of that request. And if you have thoughts
8 suggesting that the timing is proper and
9 appropriate, I'd be very interested in hearing it.

10 MS. CROCKETT: As we went through the
11 many workshops with the Applicant, we were
12 basically told that all the evidence -- that there
13 was no need to worry about the water, that all the
14 evidence had been submitted and that if we had any
15 questions or concerns then this would be the
16 appropriate way to do that.

17 The Applicant has stated on numerous
18 occasions in the various workshops that they have
19 submitted everything that there is, and so I --
20 I'm struggling with this. Am I answering your
21 question?

22 And so consequently, I thought that we
23 needed more data on this issue so that the
24 Commission could make an informed decision about
25 the certification.

1 COMMISSIONER LAURIE: Okay. I thank you
2 for that explanation. I just wanted to make sure
3 you understood my concerns.

4 MS. CROCKETT: I think so.

5 COMMISSIONER LAURIE: Okay. Thank you.

6 HEARING OFFICER BOUILLION: I think at
7 this point, before we go any further, I should
8 tell you all that after we finish hearing
9 arguments on these motions we're going to talk
10 about other matters here tonight, and one of those
11 is the scheduling. And one of the matters that
12 appears on that schedule are public hearings that
13 will occur probably around February or March. And
14 they'll last for the better part of a month, not
15 continuous, but off and on at acceptable dates.

16 And at those hearings, we will swear in
17 witnesses, like Dr. Fox, if she cares to
18 participate, the Applicant's experts, if they care
19 to participate. And those issues can be raised
20 again at that time.

21 And just because the Applicant says
22 there is no water issue doesn't mean there is no
23 -- that there is no water issue. You can raise
24 that. The motion is the proper way to -- to bring
25 that up. What I believe Commissioner Laurie was

1 questioning was whether or not we have enough
2 evidence before us to really make a substantive
3 decision.

4 You talk about, for instance, the
5 porosity of -- of the aquifer. And you're saying
6 we don't know what it is, and we need to make --
7 well, have we heard, in fact, all of the evidence
8 that there is to hear on that matter, and do we
9 have it all before us tonight.

10 MS. CROCKETT: I think Applicant, in
11 their final response, states that there is more
12 than enough supported data in front of the
13 Commissioners to support their position. And when
14 I was talking with Dr. Fox, she said it's at the
15 end of their response to the motion. So I would
16 assume that Applicant feels that there is enough
17 data.

18 Does that --

19 HEARING OFFICER BOUILLION: The
20 Applicant -- the fact that the Applicant feels
21 that there's enough data doesn't mean the
22 Commission agrees with that, okay?

23 All right, let's go on. Have you
24 concluded your remarks that you have?

25 MS. CROCKETT: No. No, I have not

1 concluded my remarks.

2 HEARING OFFICER BOUILLION: All right.
3 Please continue.

4 MS. CROCKETT: In talking with the
5 Burney Water District, I asked about whether there
6 were mid-basin monitoring wells. They stated
7 there was not. The Applicant has stated in their
8 AFC that they have presumed a usage of 20,000
9 acre/feet extrapolating on the amount of crops,
10 and they're using hay and alfalfa. And that
11 changed in '95, and went to rotating crops of
12 mint, garlic, and carrots. Black Ranch and Goose
13 Valley Ranch went to rice.

14 So, again, there was such a tremendous
15 usage on the aquifer that has not been recorded,
16 and we feel that we need these studies if only to
17 find out how the water table is reacting to the
18 usage, and the actual flow under the basin.

19 We don't dispute that there appears to
20 be a lot of flow under the basin. We do dispute
21 that by using the falls and adding up the assumed
22 consumptive use within the basin, that it will
23 give the Applicant the amount of water that's
24 available, and how much is left over in order for
25 them to go ahead and do the pumping. And there

1 are more than 11 domestic wells, as stated in the
2 application. There are approximately 25 to 27
3 wells up in our area at the northern end of the
4 valley. There is a lot of data that has not been
5 collected that needs to be collected.

6 Our main concern about the water issue
7 basically it's down to the salts. I was in a talk
8 with -- I talked with James Rorbach of the State
9 Water Resource Control Board, on a letter that was
10 submitted by the Applicant in their motion. It's
11 the last exhibit in response to our motion. If
12 you'll look at your last exhibit there.

13 HEARING OFFICER BOUILLION: Go ahead.

14 MS. CROCKETT: In that letter, James
15 Rorbach states that Burney Mountain Power could --
16 excuse me, Three Mountain Power, deposit up to two
17 and a half tons of salt per day into the
18 groundwater. That raises an issue of degradation
19 that is just monumental. That will raise the
20 levels of the existing TDS. And I asked Mr.
21 Rorbach for the Burney water system up here, our
22 aquifer, may I use the word salts instead of TDS.
23 And he said yes. He said the water is so pure up
24 here that TDS is basically referred to salts.

25 What the Applicant is proposing is to

1 degrade the water by 100 percent, or in excess
2 of 100 percent from the existing levels that are
3 here in the basin. The State Water Resource Board
4 estimates that our salt levels, or our TDS levels
5 are probably below 100 milligrams per liter.
6 Applicant repeatedly states this is not
7 significant, we are within the beneficial uses
8 definition of the state drinking water standards.

9 I want to make it very clear the state
10 drinking water standards contain almost in excess
11 of 900 percent more total dissolved solids than
12 the water that exists right here in this basin.
13 We have a rare, rare resource up here. This state
14 has so many problems starting to happen right now
15 with lack of water in other areas to use this
16 quality of water for a power plant, when there is
17 other technology available. Our group just can't
18 accept this. The Applicant has a plant in Mammoth
19 that is using dry cooling. The technology is
20 there.

21 We are not saying to not allow this
22 plant to come in. We are saying come in, but
23 don't harm the environment. And that's why our
24 motion is before the board, to find out exactly
25 what we have, what will happen to it, and where it

1 will go.

2 Right now we're in contact with Hal
3 Trout, Trout Unlimited, we're trying to contact
4 Shared Streams, to find out what they feel the
5 impacts will be on our water system. We have
6 water aquatic specialists that are in our group
7 that had to leave unexpectedly. They're incensed
8 at the amount of salts that are potentially going
9 to be dumped into our water system.

10 Granted, it will not be two and a half
11 tons ever day, day in and day out. But we have no
12 idea what the long term impacts will be for this
13 system. We have salt deposition problems in the
14 Imperial Valley. We have water here that can help
15 heal that problem. We don't need to create that
16 problem here.

17 And that is basically my concerns, is,
18 number one, this petition is asking you to prevent
19 degradation of existing water quality. To use the
20 beneficial water definition levels of a thousand
21 milligrams per liter when we have below 100
22 milligrams is asking us to allow our water in the
23 local wells to be degraded by 100 percent within
24 half a mile. And that's assuming that the flow is
25 what everyone thinks it is under the basin.

1 If the flow is -- excuse me -- isn't as
2 much as is supposed by using the water basin
3 budget, then that will increase.

4 Thank you.

5 HEARING OFFICER BOUILLION: I'd like to
6 call Applicant to respond at this time. Do you
7 have an amplification microphone?

8 (Inaudible asides.)

9 MR. ZISCHKE: If I hold it real close
10 you can hear in back?

11 Commissioners and staff, I'm Michael
12 Zischke, representing the Applicant. I'm going to
13 focus primarily in my remarks on responding to
14 several comments that were in the other responses,
15 and also mentioned this evening.

16 I do want to mention, as demonstrated in
17 our response, the Burney aquifer is a known
18 quantity. There are several studies, in fact, not
19 just our own study, demonstrating two basic
20 points.

21 First, there's a great deal of available
22 water in the Burney basin. Second, we will use
23 only a small part of that water that is available.

24 The motion repeatedly claims that the
25 aquifer is an unknown quantity, and the studies in

1 the record plainly contradict that. There are
2 studies which confirm the direction of flow, the
3 amount of available water, and all the other
4 factual questions that are raised in the motion.

5 There's been, I think, a lot of
6 mischaracterization about how those studies were
7 done, and I'll talk about a couple of examples
8 later.

9 Procedurally, in our view the Commission
10 staff assessment process -- is this working?

11 FROM THE AUDIENCE: No.

12 HEARING OFFICER BOUILLION: It seems to
13 work when you hold it very close to your mouth.

14 MR. ZISCHKE: Okay.

15 HEARING OFFICER BOUILLION: Very close.

16 MR. ZISCHKE: Procedurally, the
17 Commission staff assessment process is the proper
18 procedure for confirming that the water
19 information is adequate, and that staff assessment
20 process is underway. It does not require a five-
21 year study or a one-year study, as CURE has
22 suggested in their response.

23 Let's take a look at what the
24 preliminary staff assessment that starts that
25 process says. On page 57, staff state that the

1 available data appear to indicate that the
2 groundwater supply is adequate for both current
3 and future uses, including the project.

4 In the Preliminary Staff Assessment,
5 staff have asked for more information to confirm
6 some of the water conclusions, and to confirm that
7 the project will not significantly affect water
8 quality. They've talked about a drought year
9 water budget and things like that.

10 We're going to provide that information.
11 That's the information that's needed to complete
12 the Final Staff Assessment. We'll be doing that
13 soon. We think much of that information
14 essentially is the type of information that can be
15 provided in the timeline of a data request and a
16 response to a data request.

17 So that information is going to be
18 developed during the process. It's not a basis
19 for delaying the project for a one-year study or a
20 five-year study.

21 Back to the factual point. The
22 arguments supporting the motion, many of them are
23 misleading or even just simply wrong, and I want
24 to cite a few examples.

25 In the brief from CURE, there's a

1 statement that the project will increase pumping
2 from the Burney aquifer by 269 percent. And
3 that's simply misleading. What they're comparing
4 our pumping to is the existing pumping from the
5 Burney Water District. But that's not all of the
6 current use of the aquifer, and in fact our use,
7 about 3,000 acre/feet per year, is small in
8 comparison to the 169,000 acre/feet of water,
9 roughly, that the various studies show as
10 available per year.

11 So that -- that citation is comparing
12 apples and oranges.

13 The consultant for CURE, who is also
14 cited by the Burney Resource Group, says there has
15 never been a pump test anywhere in the basin. And
16 that's part of the ground for their criticism. In
17 fact, there have been a number of pump tests, and
18 they're part of the data that we have relied on.
19 They're listed in Appendix A to the Lawrence
20 report, and if you look in Appendix A you're going
21 to see a number of rows of data, and many of those
22 are going to show well tests, pump tests, where
23 they list a discharge, a draw down, and a time.

24 That's a test, and some of them are
25 short tests, one to five hours. There's several

1 eight hour tests, and the 24 hour tests. Those
2 are pump tests. They show draw down. They were
3 used in calculating the conclusion. The statement
4 that there hasn't been a pump test is simply
5 wrong.

6 CURE's consultant also claimed that the
7 flow over Burney Falls is substantially smaller
8 than our studies indicate. They cite the Lawrence
9 Livermore isotope study. That study is perfectly
10 consistent with our analysis. And that study did
11 look at groundwater, and obviously Burney Falls is
12 composed of both groundwater that comes out, as
13 well as surface water flowing over the falls.

14 CURE's claim is also contradicted both
15 by the Lawrence and Associates study that we
16 submitted, as well as the CH 2M Hill study for the
17 Burney Water District.

18 And I'm wondering if I should stop and
19 switch. Is this --

20 (Inaudible asides.)

21 MR. ZISCHKE: Okay. Am I talking loud
22 enough?

23 Both CURE and the Burney Resource Group
24 tonight also said we assumed 87 percent recharge
25 to the aquifer. But that's a misreading of our

1 tables. When we calculated the amount of
2 recharge, we made two deductions. One deduction
3 shown in the table for evapo-transpiration, and
4 another one from runoff. The runoff is the 13
5 percent, but then we made the two deductions. And
6 actually, our recharge number is more conservative
7 than the recharge number in the Lawrence Livermore
8 report that they're so fond of citing.

9 The final point I want to make relates
10 to the issue of total dissolved solids that was
11 raised tonight, and I think again, one sentence
12 was cited from something that's in the record but
13 not some of the other sentences, including a
14 statement in that letter from the regional water
15 board that there would be no apparent effect on
16 beneficial uses.

17 Now, we're going to go through the
18 regional water quality control board process.
19 They're the agency that's charged with protecting
20 -- should I back up a sentence for the tape?

21 We're going to go through the regional
22 water quality control board process. They are the
23 agency that is charged with and has all the
24 technical expertise in ensuring that water quality
25 is protected. And, but I, you know, that is, at

1 least on a preliminary basis, an important
2 statement that they've made.

3 In sum, we think there is substantial
4 documentation in the record. We know we're going
5 to provide more information in response to staff's
6 request. But there's no basis for requiring
7 either a five-year water study, or the one-year
8 water study that was suggested in CURE's response.

9 And unless there are questions, that's
10 our response. I would, if there are factual
11 questions that come up about what we've submitted
12 in further testimony from intervenors, if
13 necessary, I'd like the ability to respond just to
14 factual questions that might come up. But that
15 concludes the response.

16 HEARING OFFICER BOUILLION: I'd like to
17 state for everyone's information, and also for the
18 record, that the Public Adviser, Roberta Mendonca,
19 is now present. If she'd like to identify
20 herself? There she is. So if anybody has -- if
21 anyone has any questions about how to participate
22 in this meeting, please feel free to consult with
23 her.

24 (Inaudible asides. Chairs being moved.)

25 HEARING OFFICER BOUILLION: All right.

1 I'd like to resume now.

2 Mr. Ratliff, do you have any comments on
3 behalf of the staff of the Energy Commission?

4 MR. RATLIFF: Yes, I do. I've got the
5 conch, but I don't know if it works.

6 Does anyone hear me? Does anyone not
7 hear me?

8 (Inaudible asides.)

9 MR. RATLIFF: I need to hold two of
10 them. I can have my own --

11 (Laughter.)

12 MR. RATLIFF: Okay. The staff gives
13 Burney Resources Group a lot of credit for raising
14 the issues that it's raised, and for doing
15 independent analysis, and raising issues in an
16 area that I understand is very critical to the --
17 the Burney area, because nothing's more important
18 than the quality of the water, and the
19 availability of the water supply.

20 And to the extent that the Burney
21 Resources Group argues that we need more
22 information, the staff is in agreement. But the
23 staff's view on the motion is that we -- we look
24 at all of these motions from the point of view of
25 what information do we actually need to conclude

1 our analysis about the impact. And in our view,
2 we have certain discrete needs that have to be
3 addressed before we can reach a conclusion about
4 the impacts to both water availability and water
5 quality. But we don't believe that that includes
6 a five-year study of the aquifer.

7 Now, what I -- I would suggest to you
8 that I think I'd like to turn it over to the staff
9 consultant on water quality and have her discuss
10 in detail what additional information the staff
11 believes actually is needed to reach a conclusion,
12 and what that would entail. And I'll do that now,
13 if the committee so desires. Linda Bond is the
14 person who would speak to this issue.

15 MS. BOND: Thank you. I had a list of
16 about five or six items that the staff still needs
17 in order to evaluate the impacts, potential
18 impacts of this project. In looking over the lack
19 of information we do have, and the -- and the
20 unknowns, one of the items that would go a long
21 way in answering questions would be to install a
22 supply well prior to the start-up of the project.

23 What this -- what the installation of a
24 supply well would do is, first of all, provide
25 information -- answer the question of what the

1 water quality of the supply water will be.

2 Secondly, it would resolve any questions
3 about where the supply is going to come from.

4 It'll resolve agreements between the Applicant and
5 the Burney Water District, and the -- the location
6 of the wells would be known. And finally, the
7 well yield will be known. At that point, well
8 interference could also be checked with aquifer
9 pumping tests.

10 The big plus in my recommendation to go
11 ahead and install one of the supply wells is that
12 with having a known water quality, then the
13 calculations for the number of cycles that can be
14 made with the supply water, the resulting volume
15 of waste water would be known, the concentration
16 and constituents of salts would be known, and a
17 much better estimate would be able to be made for
18 what the composition of the waste water that would
19 be discharged to the percolation ponds would be
20 made.

21 Moving on from there, the staff also
22 needs to have a better estimate of what the
23 impacts, potential impacts of the waste water
24 discharge to percolation ponds would be.

25 The model that was developed by the

1 Applicant represented one possible set of
2 conditions for the aquifer. This one set of
3 possible conditions was, in my mind, a --
4 essentially it did not address the range of
5 probable conditions in the aquifer system. So we
6 have no sense at this point of what the range of
7 impacts may be.

8 What the staff recommended in the PSA
9 was they would like to see the model rerun using
10 conservative parameters, and this would include
11 lower porosities, lower permeabilities, lower
12 storage factors, also a more conservative estimate
13 of the thickness of the aquifer. All of these
14 components would provide a much larger measure of
15 safety in these -- these estimates.

16 From my reading of Lawrence Livermore
17 Rose, et al's research, it's clear that the
18 aquifer does respond, water levels do respond to
19 changes in rainfall, that water levels do drop
20 when we're experiencing a drought up here. And so
21 that indicates also indirectly that the storage
22 capacity of the aquifer is small, and is sensitive
23 to the rainfall.

24 And so it's very important that in
25 looking -- in running any sort of models, that we

1 remember that we need to look at a range of what
2 the impacts can be, and not just pick a single
3 number. When as -- if the Applicant decides to
4 pursue this, we also will want a better
5 identification of what the basis for your
6 selection of values are.

7 And that's what my recommendation would
8 be, as far as moving on with the -- with a better
9 estimate of what the likely impacts from the
10 percolation pond -- ponds would be.

11 Number three, we would like to see a
12 calculation of a water budget during drought
13 conditions. Okay. The alternative water supply
14 that the Applicant's identified is to place water
15 supply wells onsite. And as we discussed at the
16 PSA, with onsite wells there's going to be much
17 more of a problem with the water quality in those
18 wells, because they will be picking up water that
19 is percolating from the waste water ponds. And so
20 if an agreement can't be made with the Burney
21 Water District, and the wells will have to be
22 onsite, there's going to have to be a -- a careful
23 analysis of how that water would be treated before
24 discharging it to percolation ponds.

25 And finally, the water quality analysis,

1 I believe Rich Sapuder will go into in more
2 detail. The staff would like to see analyses of
3 the water supply performed with lower detection
4 limits.

5 Rich.

6 MR. SAPUDER: Sure.

7 MS. BOND: Can you expand on this?

8 MR. SAPUDER: Sure. I'll go ahead and
9 discuss the -- the lower detection limits for the
10 source water supply, and I'll also go over just
11 trying to -- to inventory what we put in the PSA
12 regarding the other information that we're going
13 to be looking for from Three Mountain.

14 As far as the detection limits for the
15 source water supply, that's -- that's important.
16 Whatever's in the source water supply gets
17 concentrated as it goes through the plant in its
18 cooling processes. We looked at the -- the
19 information provided by Three Mountain, and we
20 found that in some cases we thought that detection
21 limits could be a bit lower, which means we would
22 actually have a better idea of what's in the
23 water. And that would give us a better idea about
24 what's going to be concentrated and to what
25 extent.

1 So we're going to be requesting more
2 information, better information on the water
3 quality that's actually going to be used in the
4 plant.

5 Some of the other things were mentioned
6 is the groundwater monitoring plan. We need to
7 know the status of the groundwater before the
8 project starts up. We need to know the status of
9 the groundwater both up gradient and down gradient
10 from the proposed percolation ponds. And we're
11 also going to need the same type of information
12 after the project is running, so we can know if
13 there's any degradation or change.

14 With regard to the total dissolved
15 solids issue, currently the MCL is -- is being
16 discussed, the secondary MCL for drinking water is
17 being discussed as a thousand milligrams for
18 liter, or part per million. That's the upper
19 limit of the allowable range for that particular
20 constituent in the waste water. The recommended
21 limit is 500 parts per million.

22 That's something else that we're going
23 to be looking at, is which one is more appropriate
24 for this particular situation, given the -- the
25 project as it's proposed at this point.

1 Let's see. Also, we notice that in the
2 AFC the water -- the water budget for the plant,
3 it was estimated to be about 2900 acre/feet per
4 year water supply needed, with about 440 acre/feet
5 per year discharged as -- as waste water. Later
6 on, that was revised to increase the water supply
7 needs to 3500, approximately 3500 acre/feet per
8 year, an increase of about 20 percent, and an
9 increase in the waste water discharge of about 70
10 percent, over 70 percent, to about 760 acre/feet
11 per year.

12 We need a better explanation of -- of
13 your rationale for why that's occurring. Where is
14 the -- why is additional water needed, and why are
15 you discharging -- does the discharge go up to 70
16 percent.

17 We also need to know, within the plant,
18 where those changes are occurring, in what waste
19 streams and what processes. This will allow us to
20 take a closer look at perhaps within the plant
21 alternatives to pre-treat that waste to remove
22 some of the waste, if that seems appropriate, to
23 increase the quality of the waste discharge.
24 That's something that could be a key issue here.

25 Again, the water balance for the plant.

1 And, as Linda touched on, the water supply, either
2 whether it's going to be Burney Water District or
3 onsite wells, and she pointed out the -- the
4 issues with the onsite wells. Obviously,
5 recycling and concentrating of the waste from the
6 percolation ponds.

7 The well interference studies, and also
8 the aquifer testing, that's something that -- that
9 will give us a better idea of just what those
10 wells are capable of supplying.

11 The issues of the -- the aquifer and
12 pump testing that have been done previously on
13 other wells at other parts of the basin is --
14 there have been other tests done, but this is not
15 a -- what you'd consider a standard -- standard
16 aquifer. It's not a sedimentary aquifer, it's not
17 -- water is not held in -- in void spaces or pore
18 spaces. In most cases, within the -- within the
19 aquifer, it's a fractured volcanic aquifer, and
20 that means that water is where you find it. And
21 at different parts of the aquifer, depending on
22 where you put your well and how extensively it's
23 fractured, you may get more or less water.

24 So where you're going to get your water
25 from needs to be evaluated. And it needs to be

1 determined of whether you can supply that water
2 and what quality of water it's going to be.

3 Okay. We touched on the waste water
4 pre-treatment, looking at the -- the waste water
5 streams within the plant. And a better discussion
6 of the alternative cooling methods, which will
7 either -- will either/or, or both/and decrease the
8 amount of water needed for the operation, or
9 increase the -- the quality of the waste discharge
10 and minimize the waste discharge.

11 There's also some -- some relatively
12 minor but important aspects regarding the storm
13 water and erosion plans. Three Mountain provided
14 a plan for the site. They did not discuss the
15 same type of information for the linear
16 facilities. Those are considered pipelines and
17 transmission lines. We're going to need -- need
18 to know how that's going to occur.

19 As Linda mentioned, the worst case water
20 supply for the -- for the water supply issue, that
21 is during a drought type situation, and also the
22 impacts of that type of situation on the waste
23 water discharges to the percolation ponds and the
24 impacts, possible impacts to the aquifer under low
25 recharge, presume it would be lower dilution type

1 conditions.

2 Another minor point was there's going to
3 be -- the water coming in at the plant for the
4 water supply is going to be pre-treated, using
5 reverse osmosis. At this point, looking at the --
6 the information in the AFC, it looks like that's
7 not a particularly high performance system. And
8 we're going to -- we'll have to look at perhaps
9 the source water can be cleaned up a little
10 better, using a higher performance reverse osmosis
11 system, so that less waste is discharged.

12 And so we've asked, in the PSA, for
13 additional information on exactly what type of
14 performance their pre-treatment system is using.

15 And another minor thing would be they
16 get a grading permit from Shasta County for this
17 project, so we hope they'll provide that also.

18 So those are just a few things, some of
19 the high points from the PSA, and additional
20 information that we're going to be asking Three
21 Mountain to provide to us.

22 Some of these things, if I understand
23 the process, I'm becoming more familiar with it,
24 is these things will be worked out in the -- in
25 the hearings, I guess, that -- or workshops, and

1 we'll have a chance to actually discuss these and
2 hopefully come to something that works for
3 everybody.

4 HEARING OFFICER BOUILLION: Mr. Evans,
5 do you have anything to say on this particular
6 motion?

7 MR. EVANS: Yes.

8 HEARING OFFICER BOUILLION: Could you
9 use the microphone, please? Well, maybe you don't
10 need it, I don't know.

11 MR. EVANS: I don't have a microphone,
12 and I don't need one.

13 I do need one?

14 In the first place, the way I understand
15 it, legally, there is no water available for this
16 Three Mountain Power Plant. Read your state
17 constitution. It was passed back in 18-something
18 or other, says that you cannot dump any
19 contaminant in a flowing water or into an
20 underground source. Now, how are we going to get
21 around that? That's one thing.

22 Second thing is, the letter that I just
23 received from the regional -- what is it, regional
24 water quality board, states that if the water
25 quality in any aquifer is superior to the state

1 requirements, you cannot degrade that water in any
2 way, shape, or form, without some sort of a
3 special license from the state. And that license
4 has never been applied for. So how can you stand
5 here and argue about water you don't even have?

6 That's my point. Thank you.

7 HEARING OFFICER BOUILLION: Mr. Nelson,
8 do you have any comments?

9 MR. NELSON: Yeah. Is there a
10 microphone that I need?

11 HEARING OFFICER BOUILLION: There was
12 one -- I don't think this one will reach that far.

13 MR. NELSON: I can come up there, if
14 you'd like.

15 HEARING OFFICER BOUILLION: But I had
16 one over there earlier.

17 (Inaudible asides.)

18 HEARING OFFICER BOUILLION: If you want
19 to come up here, that's fine, too. We can reach
20 the end of the table, at least.

21 MR. NELSON: Yeah, I'm going to try to
22 state what I think, that we might need some more
23 water studies, a five-year study in particular.
24 The Applicant has stated that taking the water out
25 of -- out of this aquifer will not significantly

1 impact the environment. And I think that anytime
2 that you take this kind of water, you know, out of
3 a system, it has the potential to degrade, you
4 know, what comes after that.

5 And in this case, I'm most concerned
6 about Burney Falls. It does definitely have the
7 potential to degrade Burney Falls. When you
8 reduce water going over the falls by, you know,
9 two percent, which the Applicant says that that's
10 probably what their use would be, and there would
11 be two percent less water going over the walls,
12 and up to five percent in drought years, to me
13 that's significant.

14 When you magnify that by the amount of
15 water already taken out of the aquifer, you know,
16 right now under normal conditions, 12 percent of
17 the water that historically went over Burney Falls
18 is not going over there today. And 25 percent in
19 drought years is not going over there today. So,
20 in other words, when Teddy Roosevelt made the
21 statement that Burney Falls was the eighth wonder
22 of the world, he saw 25 percent more water
23 potentially going over the falls than we see
24 today.

25 And the Applicant says that's not

1 significant. I think that's very significant.
2 I think it's very significant to the future of
3 this area, and I think when you have a situation
4 where -- I mean, what -- I guess that brings up
5 the question, what is significant? Is 25 percent
6 less water going over a falls significant? I
7 don't know.

8 They also use the term excess water
9 quite a bit. And because, to me, in some cases,
10 in a lot of their documentation they talk about
11 groundwater as being a closed system, yet in other
12 cases, you know, they -- they state correctly that
13 this is an unconfined system. Well, what that
14 means is there's water leaving this aquifer, and
15 that water right now is leaving over Burney Falls.
16 So you might say that this is excess water that's
17 usable water, is available water, and taking out
18 this amount of water doesn't have a significant
19 impact.

20 But I think the minute that it becomes
21 surface water, which is what happens at Burney
22 Falls, you have to look at it differently. It's
23 no longer groundwater, it's surface water. And
24 let's see what that effect might have.

25 Three thousand acre/feet of water every

1 year, less going over Burney Falls. That's over
2 3,000 acre/feet every year less than PG&E is going
3 to use at their power plant to produce
4 electricity. Yet this project is supposed to be
5 adding electricity to the system. There's a
6 definite possibility that 3,000 acre/feet less is
7 going to have an impact on their ability to
8 produce electricity.

9 And the good thing about hydroelectric
10 electricity is instead of going up in steam to
11 cool towers, that water continues on to be used
12 again. So let's follow that 3,000 acre/feet on
13 down the Pit River. And all of a sudden it ends
14 up in Shasta Lake, and what does 3,000 acre/feet
15 of water mean to recreation in Shasta Lake? I
16 think it's significant. I think it's very
17 significant. I think the people, the hundreds of
18 thousands of people that use Shasta Lake every
19 year would consider it significant, also.

20 But the good thing about recreation is
21 it also allows that water to flow down and be used
22 again. So let's follow it on down the Sacramento
23 River. And now, we have this water being used to
24 significantly impact the threatened fall run of
25 salmon coming up the Sacramento River. Is that

1 impact significant? I think it would be very
2 significant.

3 And then this water can be used further
4 down for maybe agriculture. Maybe it can be used
5 to keep the salts out of the delta from
6 encroaching further up the Sacramento. Whatever
7 it is, I think the impact is very significant.
8 So to consider this water excess water, unusable
9 water, water that is -- I think, you know, we have
10 to tie this system into the rest of the state.

11 And why I think this is important to a
12 five-year study, trying to get back on track here,
13 is, you know, part of the question for the need
14 for this study was how this project met some
15 particular state rules. And the Applicant
16 answered some of those. One of them was how this
17 water might be used, one of the state laws is if
18 water can be used to recharge an aquifer that has
19 been degraded. And the Applicant said, well, this
20 really doesn't apply because there's no -- it
21 would require a transportation system from here to
22 that basin where water would be needed. It was in
23 their reply.

24 Well, to me, there's no better
25 transportation system than we have in the state of

1 California as the Sacramento River. And this
2 water directly flows into that river. Now, water
3 -- this water could very easily be used to
4 recharge some of those areas where groundwater
5 recharge is a problem, even though it might not be
6 in this basin.

7 So to just say that -- that it wouldn't
8 have an effect because you don't have a
9 transportation system, I think is -- is false.
10 And I think that's why there's a need to do more
11 water studies, to see how significant the impact
12 of this use of water will be. Because for them to
13 say that it's not significant, to me is, you know,
14 something that I really have a problem with.

15 So, you know, what this means is we're
16 going to have to make -- or you're going to have
17 to make some very tough choices down the road, and
18 those choices are going to have to be to balance
19 all that we know, or don't know right now about
20 the aquifer, the water, how it can be used, and
21 its significance. And right now, at least when
22 the Applicant says that they don't think it's a
23 significant amount, to me, I think we need to look
24 at that, and we need more studies about that
25 significance to see if, in fact, it is

1 significant.

2 To me, it certainly is. And we do have
3 some tough choices to make. Fortunately, I think
4 that we do have the option, and that option is
5 that there are other technologies out there that
6 would meet all of our needs. There's, you know,
7 there's systems that would meet all of our needs
8 and not use the amount of water that we're talking
9 about here.

10 Finally, this -- the Applicant includes
11 a section in what they will be required to do if
12 the plant is closed, and they talk a little bit
13 about that. And --

14 PRESIDING MEMBER KEESE: Mr. Nelson, can
15 I -- the -- we've been a little lenient here. The
16 motion is to require a five-year study before we
17 go forward. The next motion will be to require a
18 five-year study after.

19 You're not getting down to closure of
20 the plant. The -- what's relevant right now is
21 should we require a five-year study before we move
22 forward.

23 MR. NELSON: Okay. Like I -- and I am a
24 little -- okay, I am a little bit confused,
25 because I know when you first had the questions to

1 the Burney Resource Group about the timing of such
2 a motion and of its relevance at this time, I
3 think what they were saying is what information
4 that they think they needed right now to go on
5 with this project. And that's what they were
6 requesting by this motion.

7 I see staff asking basically the same
8 questions about what they think is required right
9 now to go forward, what information they would
10 like to see. So I guess I am a little bit
11 confused, because they were basically, I think,
12 asking the same thing that Burney Resource Group
13 was, that the question of timing and its relevance
14 wasn't raised. So I guess I am confused.

15 PRESIDING MEMBER KEESE:: What staff in
16 their filing indicated they did not believe a
17 five-year study was necessary, but that they --
18 there were certain things that were necessary
19 before they could say this is an okay project.

20 So that -- they did -- they responded in
21 writing, and then orally argued their case as to
22 what they think. And we were a little lenient
23 with staff and how far they went, too. So if you
24 can stick to your feelings about requiring a five-
25 year study before we move forward.

1 MR. NELSON: Okay. And again, I will --
2 I will kind of just --

3 PRESIDING MEMBER KEESE: You're going to
4 -- you're going to get a chance to be a witness as
5 this hearing goes on, and we take evidence, which
6 you've given quite --

7 MR. NELSON: Okay. So I'll just real
8 quickly, I'll say I think we need more water
9 studies, and a five-year study would be great. We
10 don't have any baseline information to act on. We
11 don't have a clue how much water is going over
12 Burney Falls, and yet a lot of assumptions are
13 based on that.

14 The last study was done in 1922. That
15 study was done by the USGS, and from what PG&E
16 tells me, the type of gauging study that they did
17 has a plus or minus efficiency rating of about 20
18 percent on a stream like Burney Falls, or Burney
19 Creek, because of the velocity of the stream and
20 the fact that it's not a weir type of environment.
21 So to use that information as a basis for a lot of
22 the assumptions that are made after that, to me is
23 another reason why we need that type of baseline
24 study.

25 Secondly, I don't even know why we -- we

1 get into so much about the -- the quality of
2 water. And to me, the water resources control
3 board guidelines about the low down water from a
4 plant say that they have to go in lined ponds, so
5 I don't even know why we even get into the
6 arguments about anything other than that. It
7 seems like it's pretty clear in their policy that
8 they require lined ponds, and if I'm reading
9 something wrong -- every time we get into, you
10 know, all this perc stuff, I don't understand why
11 we're even getting into that discussion, because
12 there is a policy that says low down water will
13 either go to salt sinks or lined ponds. And I
14 don't see anything --

15 Now, if this body does have the
16 authority to, you know, alter that in any way,
17 boy, if you look at the fragile environment that
18 we have and the extra pure water that we have,
19 this sure doesn't seem like the place to do that.

20 Thank you.

21 HEARING OFFICER BOUILLION: Ms.
22 Reynolds, do you have some comments? Would you
23 mind coming over here and speaking?

24 MS. REYNOLDS: Sure.

25 Okay. Let me know if I fade out.

1 I'll just make this brief. As far as
2 procedure goes, I don't think we care. We just
3 want these issues addressed before the project is
4 certified. Whether that's through evidentiary
5 hearings or an order on this motion, we don't
6 really care about that.

7 I won't go into the technical stuff,
8 because most -- most of what our consultant, Dr.
9 Fox, has told us is what the staff has in their
10 PSA. We may quibble about a couple minor details,
11 but she basically concurs with staff on what's
12 needed.

13 I do want to apologize for the
14 misleading statement that Mr. Zischke said I made
15 in my brief. I do -- I noticed that right when I
16 read it, and my hope was that it was so apparently
17 erroneous that you would understand that, too.

18 I did compare the Burney Water District,
19 or extrapolated the Burney Water District pumping
20 to the entire basin, and that's not true. The
21 figured quoted there were the increased pumping
22 from Burney Water District only.

23 And also, I wanted to clarify on the
24 pump tests. Pump tests are defined in various
25 ways, and what Dr. Fox meant in her declaration

1 was pump tests to determine things like aquifer
2 properties, like storativity, transmissivity,
3 things like that. Those, to our knowledge, have
4 not been conducted, and we haven't seen any data
5 on that. So I just wanted to clarify that point.

6 And other than that, I -- we stand by
7 the information in our response, and do not have
8 any changes to that based on the responses of
9 others.

10 HEARING OFFICER BOUILLION: The only
11 other Intervenor is Mr. Hathaway. Is he present?

12 Do you have anything to say, Mr.
13 Hathaway? I'd like to ask you to come up here,
14 then.

15 MR. HATHAWAY: I'd like to thank the
16 Burney Resource Group for the effort that they put
17 forth in the water -- in the water study.

18 As the adjoining property owner, and the
19 limited family partnership that's engaged in
20 agricultural pursuits, we're very concerned about
21 the definition of the aquifer. It's easy to study
22 aquifers that stand still and let us measure them.
23 Unfortunately, the aquifer that runs under the
24 Burney and Hat Creek and Goose Valley Basins are
25 -- are moving aquifers that -- that recharge

1 seasonally from rainfall and snowfall.

2 My biggest concern is that there's been
3 a lot of discussion of pump test and testing
4 pumps. I think we need to -- the test needs to be
5 a sustained yield test. It -- for example, from
6 May until July, because of the crops that we grow,
7 our well has to run 24 hours a day, seven days a
8 week. It does not shut off. My concern would be
9 that -- that the aquifer would even drop an inch
10 and expose our bowls so that the efficiency of our
11 pumping plant would drop in relationship to the --
12 to the drop of the aquifer.

13 If you'd look at the well logs that are
14 available from the Burney Water District, you'll
15 notice that the aquifer is very susceptible to
16 drought, and that the levels drop. And drought
17 years is -- is when, unfortunately, we're required
18 to even pump more, because then we can no longer
19 depend upon Burney Creek for surface water, so we
20 have to supply not only the row crops, but then we
21 have to start irrigating pastures and everything
22 else from -- from groundwater.

23 And so I have to agree with -- with your
24 staff, and if we're not going to look at a five-
25 year study of the aquifer and its production and

1 draw down capabilities, and its ability to sustain
2 a -- a pumping scenario that's being proposed by
3 Three Mountain Power, then I'd have to insist that
4 -- that we do some -- and I'm not talking 24
5 hours, because I'd like to see some draw downs of
6 site well that would operate for a month and --
7 and if they're going to use 3,000 plus acre/feet,
8 let's operate it on their site and run their well
9 for a month and see what happens to the adjoining
10 wells, because the -- the closest well to their
11 existing well site is mine. We're within a half
12 mile.

13 And I'm very concerned about the
14 aquifer's ability to sustain this pumping for one
15 year, let alone 35 years.

16 Thank you.

17 PRESIDING MEMBER KEESE: Thank you.

18 We've now heard from all the
19 Intervenors. I have a question of the Applicant.

20 The staff had asked whether you would
21 advise the committee of the time necessary to
22 provide the well testing that the staff had asked
23 for. Are you prepared to answer that, respond to
24 that question at this time?

25 MR. TOTH: My name is Les Toth. I'm the

1 project manager.

2 I would like to talk a little bit about
3 the -- the PSA. One thing I'm really sorry about
4 is that we did not receive the data request
5 earlier. If we would have received that, we would
6 have done most of the work already.

7 I think that most of the request that
8 staff asks, except for two or three, we could
9 provide by the middle of January. And we will
10 provide.

11 Now, the one that we cannot provide by
12 the middle of January is the baseline data for the
13 wells downstream at the project. That will take
14 probably another two or three weeks, maybe by the
15 end of January. We don't really know where the
16 wells are. We're fortunate that Mr. Evans is --
17 will help us identify some of those wells, and we
18 will get the data that's requested.

19 We are already in the process of doing
20 the -- the test on the water quality that's
21 requested on the sensitivity, and we will provide
22 that for you in -- just as you requested that.
23 And that will be provided by, oh, the middle,
24 latter part of January.

25 Now, when it comes to the draw down

1 test, in order to do a good test like Mr. Hathaway
2 requested, and I agree with him, that will require
3 in the neighborhood of 4,000 CFM to stress the
4 well, because we will use an average of about
5 3,200 CFM on a hot day. So in order to do a good
6 draw down test, we'd have to stress that well.

7 Well, there's no place to put that
8 water. So what we propose is that we use the
9 ponds that we're going to build so we could test
10 both the location of the wells to see how they
11 perform, and see how the ponds will perform at the
12 same time. We propose to do that as soon as we're
13 able to do the construction.

14 So in other words, we will do the draw
15 down test in significant detail and we'll provide
16 the information Mr. Hathaway requested. I think
17 that's good information that we need. And we will
18 also put that water into the ponds to verify our
19 calculation on the -- on the ponds, to make sure
20 the ponds can handle that water.

21 I'm not sure if I could do three months'
22 worth, but we'll do the calculation and see how
23 long we could do that test so that it'll test both
24 -- both the wells, we'll install both wells, we'll
25 install the -- the pipeline to it, and we'll do

1 the ponds as soon as we can start construction.

2 (Inaudible asides.)

3 MR. TOTH: If you have any questions,
4 I'll be glad to answer them for you.

5 MR. SAPUDER: Oh, I do have one
6 question. Regarding the location of the wells.

7 Regarding that, have you decided on
8 where you're going to locate the wells?

9 MR. TOTH: Yes. Yes, we have. The
10 wells will be located where the Burney Water
11 District wells will be. They will not be on the
12 property. They will not be on the site itself.

13 You have brought up some very good
14 points. We agree with those points. They will
15 not be on the property.

16 MR. SAPUDER: Okay. So I guess you're
17 going to work out an arrangement with Burney Water
18 District as discussed in the -- in the AFC and the
19 subsequent documents.

20 MR. TOTH: Yes.

21 MR. SAPUDER: Okay.

22 MR. TOTH: That's where the wells will
23 be, up on the hill.

24 MR. SAPUDER: Okay.

25 PRESIDING MEMBER KEESE: Now, that will

1 close the discussion on the first motion, and
2 we'll take a five minute break.

3 (Thereupon, a recess was taken.)

4 PRESIDING MEMBER KEESE: Okay, we'll
5 reconvene this hearing. And I -- I'll note at
6 this time that our -- we're going to take up the
7 second motion, the motion to conduct a five-year
8 water study after certification.

9 We've been quite liberal about the
10 debate we had on the first issue, not the
11 submission of testimony, but the debate on the
12 testimony that has been supplied. So I believe we
13 probably have had some of the debate already in --
14 in conjunction with the first one. The committee
15 has taken the first one under submission.

16 The second one, Mr. Evans, would you
17 like to present your argument.

18 MR. EVANS: I've made a motion before
19 the committee. I would like a five-year water
20 study after the plant is certified.

21 My plan does not stop the construction
22 of this plant in any method, or any manner. It
23 only requires the plant to be a good neighbor and
24 help me, or help protect the water supply of
25 Johnson Park. If you're going to pump three

1 million gallons of water a day, it's going to
2 degrade the water quality of downstream wells
3 through the concentrations of TDS and the
4 chemicals used by the plant.

5 So far, all of the discussion I have
6 heard seems to apply to wells which are upstream
7 of the plant, and really they are virtually
8 guaranteed to not be affected. I hope that -- at
9 one -- one spot, the Applicant states that the
10 rainwater will dilute the TDS which is going to
11 form in its ponds. But he doesn't tell me how
12 he's going to make it rain every day.

13 A water problem is going to cause an
14 undue financial hardship on people that live in
15 Johnson Park, because we're going to lose a lot of
16 our property value if there's even a suspicion
17 that these wells are going to be contaminated.

18 If you took a monthly test of water
19 quality and depth of standing water of the local
20 wells, coupled to a shut-down requirement which
21 will allow for immediate action to any problem
22 which we may suffer.

23 I don't know whether I could address
24 this part of it or not, but a better answer could
25 be found in a dry cooling method, and I -- I can't

1 go on that one. Okay. Well, you're not supposed
2 to realize that a dry cooling method might be
3 better.

4 So I guess that's about it. I thank
5 you.

6 HEARING OFFICER BOUILLION: I would like
7 to add for everyone present, as well as for the
8 record, that whether or not we're going to have
9 these cooling towers or we're going to have dry
10 cooling is a matter that can be raised at the
11 hearings that we have on the evidence for the --
12 in the certification process, as well as at the
13 workshops that are going to be held.

14 Specifically, what we're trying to do
15 here today is deal with the specific issues raised
16 with the motions themselves, and determine, one,
17 are they timely made, should they be decided at
18 this point on the evidence that we have; and, two,
19 if that's true what should that decision be, on --
20 on the narrow issues in the motions themselves.

21 And at this time, I'd like to ask the
22 Three Mountain people to respond to Mr. Evans.

23 MR. ZISCHKE: We'll respond briefly, and
24 I think I was loud enough before without a mic
25 that I can do it here.

1 Three Mountain Power is going to be a
2 good neighbor on water and other issues. That's
3 part of the reason we're going through this
4 process, as well as the regional board process.

5 We agree with the staff letter on this
6 motion, that the motion is premature and the
7 appropriate monitoring -- and there will be
8 monitoring -- will be decided when staff completes
9 its water quality analysis.

10 The motion's also premature for another
11 reason, and this kind of repeats part of the
12 argument we had before. The regional water
13 quality control board with the technical expertise
14 over water issues is reviewing the proposed
15 discharge as part of their permitting process. We
16 know they're going to require monitoring, they're
17 going to determine the scope of that, and we will
18 comply with the monitoring that they require.

19 I do want to say that we believe
20 strongly that our evidence shows that the feared
21 impacts impairing the use of groundwater at
22 Johnson Park, degrading the wells, property
23 values, is not going to occur. In the Preliminary
24 Staff Assessment we've been asked to provide
25 further information regarding that impact. We're

1 going to do so, and we -- we've already talked
2 about the timing.

3 I think I'd just say, in sum, we will be
4 monitoring water quality after certification, and
5 we'll be working with the regional board in
6 determining what that is. But we believe the
7 motion is premature right now.

8 PRESIDING MEMBER KEESE: To get a little
9 ahead of ourselves once more, for some members of
10 the audience, it is typical that when the
11 Commission looks at a project like this, staff
12 will recommend conditions, sometimes in the
13 multiple hundreds of conditions. And what was
14 being referred to here is a condition that, should
15 it go forward, would probably require the
16 monitoring you're talking about.

17 HEARING OFFICER BOUILLION: Mr. Ratliff,
18 do you have any staff comments on the second
19 motion?

20 MR. RATLIFF: Well, only to reiterate
21 what's already been said. We think that
22 monitoring of some form is probably appropriate,
23 and we would expect to put it in our conditions.
24 But it would be premature now to try to decide
25 what that is, because we haven't assessed the

1 impact yet. And until we do that, we don't know
2 what the mitigation is. The mitigation probably
3 will include post certification monitoring of some
4 form.

5 And that's what I would say, that right
6 now I think the motion is premature, but that the
7 issue is -- is one that'll be addressed in the
8 future.

9 HEARING OFFICER BOUILLION: Now, on
10 behalf of the Burney Resource Group, do you have
11 any comments on this motion? In addition to the
12 comments you made on the first motion.

13 Let me assure all of you that if you
14 said something earlier tonight, we will apply it
15 to all of the motions insofar as it is applicable.

16 MS. CROCKETT: The Burney Resource Group
17 would definitely support any post certification
18 monitoring of wells and groundwater. But as staff
19 has just said that there is not enough information
20 to make this sort of a condition yet because we
21 haven't had the appropriate information, which
22 goes back to the first motion, and at that point I
23 will just turn the mic over to someone else.

24 HEARING OFFICER BOUILLION: Mr. Nelson,
25 do you have anything to add?

1 MR. NELSON: No, I don't.

2 HEARING OFFICER BOUILLION: Ms.

3 Reynolds.

4 MS. REYNOLDS: No.

5 HEARING OFFICER BOUILLION: Mr.

6 Hathaway.

7 MR. HATHAWAY: No.

8 HEARING OFFICER BOUILLION: All right.

9 That will conclude the hearing on the second
10 motion. We will take that -- the committee will
11 take that under submission.

12 We'll turn now to the third motion,
13 which is the motion for a one-year air study prior
14 to certification. I would like the Burney
15 Resource Group to make a brief presentation of
16 their motion. To the extent that you can.

17 MS. CROCKETT: Thank you.

18 The Burney Resource Group has put forth
19 this motion because we feel there is just a
20 tremendous lack of information about air quality
21 in the Burney Basin area. And as we've stated in
22 our motion, there's a number of reasons why. But
23 our main concern is that according to federal EPA
24 standards -- guidelines, excuse me, they're not
25 standards -- guidelines, that the information that

1 is being put forth by Applicant is inappropriate,
2 or does not fully represent the air quality within
3 the Burney Basin. And this data is somewhat
4 represented by Shasta air quality as being
5 representative, and we have some minor comments on
6 this.

7 The location of the monitors in Redding
8 and in Lassen Park are beyond the impacts of the
9 source emissions that are occurring in the basin.
10 They're over 50 kilometers. Consequently, the
11 impacts that are being registered in Redding have
12 nothing to do with what is happening in the Burney
13 Basin. And the federal EPA goes on to state, in
14 their ambient -- ambient monitoring guidelines for
15 ambient air quality, that there are three areas
16 that need to be monitored, and they have not been
17 monitored in Burney for over seven years.

18 There is the area of the location of the
19 maximum air pollution concentration from existing
20 sources. Shasta air quality at this point
21 maintains that their monitors at Redding and
22 Lassen Park will represent the area of maximum
23 concentration of pollutions at Burney, but we
24 don't think so. The location of the maximum
25 concentrations increased from the proposed

1 construction.

2 Again, Shasta air quality and the
3 Applicant are saying that Redding and Lassen
4 monitoring locations are meeting those criteria,
5 when in fact only Burney will receive maximum
6 concentration increases. And that will be because
7 of the physical geography of the basin.

8 As we stated in our request for this
9 one-year pre-construction air monitoring, none of
10 the data is current or representative because of
11 these guidelines. The other guideline that the
12 federal EPA does suggest is the location of
13 maximum impact area, and again, that would be
14 Burney. And yet they're still using Redding and
15 Lassen Park.

16 And the PSD from the federal EPA --
17 sorry about the alphabet soup -- but that's
18 prevention of significant deterioration for those
19 of you who aren't familiar with this -- said that
20 if a monitor is located at only one of the
21 locations mentioned above and the locations do not
22 coincide, the source would have to monitor the
23 other locations.

24 There's only been one monitoring source
25 in Burney, and that last source happened in 1992.

1 And at that time, it indicated for PM10s that even
2 though with the much smaller population, lack of
3 industry, all of the other things that have been
4 stated, that we were in excess of the Redding area
5 by 40 percent in '92 or '91, and then the next
6 year we exceeded Redding by 50 percent for the
7 PM10 concentrations.

8 The federal EPA prevention of
9 significant deterioration requires -- excuse me,
10 does not require that the currentness of data is
11 at three years permitting the permit application
12 -- preceding the permit application. The last
13 data taken in the Redding -- or the Burney Basin
14 was seven years ago. We feel that any air quality
15 district that uses seven-year old data as
16 representative of current information within this
17 basin is not doing the job that it should be doing
18 for the people of this area.

19 We have submitted documentation to
20 support there has been growth and change in the
21 basin, and we have a 30 percent increase in a --
22 in open pit mining for diatomaceous earth that is
23 going to create a lot of fugitive dust that hasn't
24 been addressed. We have submitted that there is
25 increases in the Hat Creek Construction Company to

1 the point where they moved into the Burney Basin,
2 and they are now in the permit process for an
3 asphalt plant, batch plant. And rock crushing
4 with mineral extraction, that is going to have a
5 major impact.

6 As far as the station location, what we
7 call the met station for data collection for the
8 Burney Basin, my husband and I, under the
9 direction of Dr. Fox, went up to the the met
10 station and took pictures which we can show in an
11 exhibit right now, if you'd like to pull that out.
12 Is that -- do you want me to do that or not?

13 HEARING OFFICER BOUILLION: Are those
14 the pictures you did submit already? No, we -- we
15 --

16 MS. CROCKETT: Okay. As you can see
17 from -- well, as you saw from the pictures, the
18 obstructions are very close to the met station,
19 and they don't follow the EPA guidelines for
20 positioning of -- obstructions for wind gathering,
21 temperature, and humidity.

22 The other thing that we were able to do
23 is to take pictures between the different air
24 qualities that are represented up at the met
25 station, and in the valley. And they're --

1 they're widely divergent. We can include those.

2 Dr. Fox goes into all the data on her
3 declaration about the distances, so on and so
4 forth, about that.

5 The other thing is that this station is
6 located on the east side of the mountain, not on
7 the west. And in order to get correct data for
8 the Burney Basin, it must be on the west side.
9 And in her declaration, she goes into length about
10 all the people who she talked to and that they
11 stated that there is definitely no correlation
12 between the Brush Mountain, which is designated
13 Soldier Mountain Weather Station. That's a perk
14 of living in the mountains.

15 But it is -- was the Soldier Mountain
16 Weather Station moved to Brush Mountain, still
17 designated as Soldier Mountain Weather Station.
18 And all these people that Shasta County air
19 quality had depended upon, some of these people,
20 some of the other people that were taken in this
21 deposition -- excuse me, in statements, showed
22 that there is just no correlation between the
23 weather station and what is happening in the
24 basin.

25 So consequently, we need that current

1 data to find out where we are right now in ambient
2 levels. Right now, everyone is saying it looks
3 okay, I don't think there's any problem. If you
4 were to ask me, I would give you a judgment that
5 everything's okay. I'm not sure that's relevant
6 at this point, and that's why we have requested
7 this one-year study, that we just fulfill the
8 requirements of the federal EPA ambient monitoring
9 guidelines so that we all know where we are, what
10 the levels are, and what we can do from that point
11 on.

12 HEARING OFFICER BOUILLION: Thank you.
13 I've been informed that there is a representative
14 here from the Shasta County Air Quality Management
15 District, and it may or may not be necessary for
16 him to present anything. I assume everyone has --
17 everyone on the mailing list has received a copy
18 of their response in connection with these
19 motions.

20 Did anyone not receive it?

21 At this time I'd like to call on the
22 Applicant for his comments with regard to this
23 motion.

24 MR. ZISCHKE: Thank you.

25 As has been described, this motion seeks

1 a one-year air study before certification, and I
2 think there are two basic issues in the briefing
3 and -- and the argument, ambient air quality
4 monitoring and the adequacy of the meteorological
5 data.

6 In both cases, we've satisfied the
7 requirements. Our response brief demonstrates
8 that the data we've submitted satisfy all the
9 legal requirements that apply to this project, the
10 Commission's requirement to evaluate environmental
11 impacts, the requirements of the California
12 Environmental Quality Act for an environmental
13 analysis, as well as the federal requirements, the
14 Environmental Protection Agency's requirements
15 under the prevention of significant deterioration
16 rules.

17 So the study is not needed to resolve
18 any legal problem or any problem of having
19 adequate data.

20 There's an important practical point, I
21 think, to make about this study. It's not going
22 to provide further mitigation. And the reason for
23 that is that we took a conservative approach from
24 the beginning, for practical purposes, assumed
25 that air quality non-attainment existed and

1 provided for full offset of our emissions. We've
2 committed to fully offset our emissions.

3 There's no point to a study that, at
4 most, is going to tell us to do what we have
5 already committed to do, and that's, I think, an
6 important practical point.

7 I do want to talk a little bit about the
8 two issues, the ambient air quality monitoring, as
9 well as the meteorological data.

10 Under ambient air quality monitoring,
11 the regulations require screening to determine if
12 a project's emissions will exceed certain
13 thresholds. And if an air quality analysis
14 demonstrates that emissions are below those
15 thresholds, then the permitting authority -- and
16 that's the local air district, which is delegated
17 authority under the federal Clean Air Act -- has
18 the specific authority to determine that
19 additional monitoring is not necessary.

20 That's exactly what's happened here. We
21 performed an air analysis, demonstrating that
22 plant -- that we're well below the thresholds. We
23 reviewed that analysis with the district. Based
24 on that, the air district had the authority to
25 determine that further monitoring is not required,

1 and they've done so.

2 And I want to explain that a little bit.
3 The regulations on prevention of significant
4 deterioration include a monitoring requirement,
5 and that's generally a year but it can also be
6 four months to a year. And that's in the federal
7 regulations on prevention of significant
8 deterioration in subsection (m).

9 However, new sources can be exempted
10 from that advance monitoring requirement if the
11 impacts from the new source do not exceed certain
12 levels. And that's subsection I8I, we're talking
13 about 40 Code of Federal Regulations 52.21, for
14 the formal side. And that section, I'll just
15 quote it. The administrator may exempt a
16 stationary source or modification from the
17 requirements of paragraph M -- that's the
18 monitoring -- of this section with respect to
19 monitoring for a particular pollutant if you meet
20 those thresholds.

21 We did an air quality analysis. We used
22 modeling with conservative assumptions, as you're
23 required to do, and demonstrated that we're below
24 those thresholds. That means we don't have to do
25 the additional advance air quality monitoring, and

1 we're in compliance with the federal rules that
2 have been cited.

3 And again, that -- the authority under
4 the Clean Air Act to make that determination has
5 been delegated to the county air district. They
6 have determined that additional monitoring is not
7 necessary.

8 The second issue that was raised was the
9 meteorological data. Our meteorological data is
10 sufficient and representative -- representative,
11 and that's been demonstrated both in our response
12 but also in determinations in response to the
13 motions from the air district, as well as
14 Commission staff. And they may each speak to
15 that.

16 But Commission staff, in the Preliminary
17 Staff Assessment, at page 24, says that staff
18 reviewed the Applicant's modeling analysis,
19 including the meteorological data collected at
20 Brush Mountain, and concludes that it is adequate.

21 In the air district's letter, the
22 district believes that meteorological data that
23 the Applicant used in the modeling analysis is the
24 best available to predict local conditions near
25 the proposed site, and that it should be

1 sufficiently accurate for the purposes of modeling
2 ambient air quality impacts considering the
3 expected minor differences in temperature and wind
4 characteristics.

5 And that air district finding is
6 particularly important because the Commission
7 regulations provide for the Commission's air
8 quality compliance determination to be based on
9 the local air district finding.

10 There's another important point about
11 the meteorological data that I want to make, and
12 that is whether meteorological data is required at
13 all in the first place. And this, I'm going to
14 need to make a correction to the way we cited
15 regulations in one of the tables we had. But the
16 modeling requirements that are set forth, or the
17 modeling guidelines that are set forth in the
18 federal regulations have two levels of screening.
19 And the first level is a more general screening to
20 determine whether you cross those thresholds, and
21 then if that level indicates that you do, you have
22 to do a more detailed level of screening, and that
23 second level is what requires the meteorological
24 data.

25 And that's -- it's in part 51 of that

1 Code of Federal Regulations title that I cited,
2 Appendix W, Section 2.3 discusses those two
3 levels, and we can refer to that if there are
4 questions.

5 But there's a -- a chart in Table --
6 it's Table 2 in the air quality technical report
7 that we submitted, and the numbers for maximum
8 predicted impact are correct, but we had a column
9 there headed US EPA SILs, where we didn't list the
10 right increment in the regulations. And so, for
11 example, we had for NO2, we had a figure that
12 showed maximum impact of 1.3 versus a threshold of
13 1. Well, in fact, it's 1.3 versus 14. And I
14 apologize. We simply made the mistake and didn't
15 correctly cite what's in the -- the federal
16 standards, and those are in Title 40, Section
17 52.21, where those are set forth.

18 So some of the discussion we go in here
19 about proving through secondary analysis that we
20 don't cross those thresholds, we really didn't
21 need to do. And we apologize for that. In the
22 first place, under the first screen, where you
23 don't need the meteorological data, we come in
24 below the standards.

25 The arguments in favor of the motion

1 don't demonstrate that the analysis that we've
2 provided is inadequate in any way. I think we've
3 answered many of those assertions in the brief. I
4 do want to answer a couple of things.

5 I think several of the guidelines that
6 have been promulgated from the Environmental
7 Protection Agency on complying with these
8 regulations have been sort of selectively cited.
9 And it's important to note there are guideline
10 documents that implement the regulations with a
11 variety of requirements. These are guidelines and
12 recommendations to the local air district. In
13 other words, they're provisions that have a little
14 more flexibility than regulations do.

15 But I'll just give a couple of examples.
16 In the brief from the California Unions group, it
17 states that Brush Mountain data cannot be used as
18 -- because as a weather station Brush Mountain
19 measures meteorological conditions for ten minutes
20 of each hour. And they cite a publication,
21 "Onsite Meteorological Program Guidance for
22 Regulatory Modeling Applications."

23 Well, in fact, there's another part of
24 that document that discusses the type of data you
25 get from a weather station that monitors only for

1 part of an hour. And in -- and this is in Section
2 6.6.2 of that same document. The EPA talks about
3 how you get some shifts in data, and there may be
4 some minor differences, but they conclude -- and
5 I'll quote from this section -- "These
6 shortcomings are known to be inherent in such
7 data, and historically these observations have
8 provided adequate data for regulatory
9 applications."

10 And again, that's from the same -- that
11 same EPA guidance document.

12 There's also an argument that the Brush
13 Mountain data cannot be used because the station
14 is on the side of a mountain 620 feet above the
15 site. And the document that's cited for that
16 argument is the Quality Assurance Handbook for Air
17 Pollutant Measurement Systems. And again, there
18 are -- there are contrary statements in that
19 document.

20 And I'm going to cite from Section
21 4.0.4.3.3, where the publication states, in good
22 sort of Tax Code-like numbering, one must also
23 keep in mind the vertical structure of the
24 atmosphere. Winds measured at the bottom of a
25 hundred meter valley will not represent the winds

1 at the top of a 200 meter stack that happens to be
2 in that valley. In other words, winds measured at
3 a higher elevation under these guidelines may be
4 more representative of conditions of the stack
5 than a measurement on the valley floor.

6 It's also important to remember our
7 stack's going to be 140 feet high. The Brush
8 Mountain Station is actually only 480 feet higher
9 than the top of the stack where the -- the plume
10 will start to rise.

11 In conclusion, there's no basis for a
12 one-year air study prior to certification. Like
13 the other issues, these issues are being
14 thoroughly evaluated through the staff assessment,
15 and also through the air district's determination
16 of compliance process. And most importantly,
17 Three Mountain Power has committed to fully
18 mitigate its emissions.

19 Thank you.

20 HEARING OFFICER BOUILLION: At this time
21 I'd like to call on Mr. Ratliff, from the staff,
22 and any of his people that he brought, and I'd
23 also like you to include in your comments your
24 reaction to the proposal made by the Applicant, if
25 we were to order the -- the air study, the

1 adequacy of the proposal they made by separate
2 letter with their response.

3 MR. RATLIFF: Can you give me time to
4 consult with my air people on the letter, because
5 I didn't know you were going to ask for that.
6 You're talking about the monitoring --

7 HEARING OFFICER BOUILLION: Yes, I am.

8 MR. RATLIFF: -- requirement.

9 (Inaudible asides.)

10 MR. RATLIFF: But I can address the
11 other issue, though. I will. And that -- that
12 has to do with the motion itself. And
13 essentially, I think the Applicant has -- the
14 Applicant has stated the reasons why they believe
15 that they have complied with the federal
16 guidelines.

17 The staff, when it does an air quality
18 analysis, it cooperates with the air district. We
19 have a memorandum of understanding with the
20 California Air Resources Board that delegates in
21 our process to the district responsibility for
22 doing the air quality analysis, and determining
23 what conditions are applicable within our permit.

24 And we, in our role, let the district do
25 this, and then -- and in essence watchfully look

1 to see exactly how it's being done, as basically a
2 check to make sure that the analysis is one that
3 we think will meet all requirements of California
4 and federal law.

5 The air district has given its view that
6 the analysis is correctly done. Our staff
7 believes the analysis is correctly done. And in
8 about two weeks, the district is going to release
9 -- or perhaps even sooner -- the preliminary
10 determination of compliance that the district
11 provides, in which they will propose -- well, they
12 will actually set forth their analysis.

13 That begins a comment period for the
14 district, during which EPA, Region 9, and others
15 can comment on the nature of that analysis and any
16 defects that are in the analysis. And I think it
17 would be premature to suppose that there is
18 something wrong with that analysis until that
19 comment period has concluded and we see what EPA
20 and others might have to say about it.

21 So in our view, we think that the
22 district has complied with federal law. And we
23 think there will be an opportunity for EPA to tell
24 us if it didn't. So we don't support the motion.

25 If you have any questions about the more

1 technical aspects of it, we have an air quality
2 staff that can address it. But I would also
3 suggest that any questions that you may have
4 should be addressed to the district, as well,
5 because they're present.

6 HEARING OFFICER BOUILLION: At this time
7 -- we'll come back to my earlier question, if you
8 can have your staff review it in the interim,
9 about the offer by Three Mountain. And I might
10 call on the -- I guess we're back to Mr. Evans
11 again, are we? Do you have anything to say about
12 this motion on the air quality?

13 MR. EVANS: I support all motions that
14 help clean air.

15 HEARING OFFICER BOUILLION: Mr. Nelson.

16 MR. NELSON: Although I agree with the
17 Applicant that the effects on the air on this
18 project probably can be mitigated, I do believe
19 that it is important to know what this project --
20 what effect this project is going to have on the
21 air. I don't think it's good enough to say
22 because the project is going to be mitigated it
23 really doesn't matter to know what effect the
24 project is going to have, and say it doesn't
25 matter because we're going to mitigate anyway.

1 And the only way that we can really do
2 that, I think, is to have some baseline studies.
3 And really, that's all we're asking for, is a
4 baseline study.

5 You know, modeling is good. Assumptions
6 based on that modeling is good. But their real
7 value is in those times when you really can't do
8 anything else. In other words, if the timeframes
9 or whatever dictate that modeling or -- or
10 assumptions are the only information that you can
11 gather.

12 But that's really not the case that we
13 have here. There -- by asking for a one-year air
14 study, it won't even delay this project if this
15 modeling, as the Applicant states -- I mean, if
16 this monitoring started right away, it wouldn't
17 even have a potential to delay this project. That
18 information would be gathered before this project
19 would even start. So we're not even talking a
20 delay here. So I think the value of that is in
21 that it -- it gets beyond assumptions, it gets
22 beyond modeling; it gives us some baseline
23 information to use.

24 Now, how can we use that baseline
25 information? What importance does it have, and

1 kind of going back to the theme of the night, what
2 timeliness does it have? This is information that
3 can only be gathered before the project actually
4 starts. And that's why I think it's important to
5 have that baseline information now.

6 Now, how might we use that? Okay. We
7 talk about mitigation, and we talk about different
8 ways that this project might be mitigated. One of
9 the criteria that I think the Energy Commission
10 can require is the fact that this mitigation that
11 takes place be done within the local area. That
12 might not be a requirement, but I believe it's
13 within your jurisdiction to require that.

14 So say that we have some baseline
15 information and you set up some mitigation within
16 the -- within the Burney Basin here. One of the
17 -- the ways that mitigation has been most
18 effective in a lot of similar projects like this
19 is actually to put triggers into that mitigation.
20 In other words, once you have baseline information
21 before the plant starts operating, and then after
22 that as it's operating, you actually see what
23 effect it'll have on the project, and you can
24 apply some of those triggers if, in fact, it does
25 have any effect on the environment.

1 But if you don't have that baseline
2 information to start from, then the whole idea of
3 using triggers for mitigation, especially if it
4 was done within the Burney Basin, would be
5 something that would be in question and we'd go
6 back to the assumptions and modeling where, again,
7 I just don't see any reason why we can't go ahead
8 and get that information and we know exactly what
9 effect the project has.

10 Because again, to me, it's not important
11 whether we can mitigate or not, but I think the
12 people in this room, the people from the Burney
13 Basin, the people, they want to know what effect
14 this project is going to have on their air.
15 That's -- that's the bottom line. They want to
16 know what effect this project is -- they don't
17 really care that maybe, you know, we can do some
18 mitigation in Anderson or somewhere else. They
19 want to know here, and the only way I think we can
20 ever really know for sure what that effect is is
21 to have some baseline information.

22 I'm involved in a lot of relicenses, I'm
23 involved in a lot of other technical -- where
24 technical data is used. And having baselines is
25 one of the, you know, most common basic premises

1 of evaluating what the effects a project will
2 have. And if there was a very tough situations
3 here why we need not require that baseline
4 information, I'd say great. But we don't have
5 those. Like I said, this can be done without even
6 delaying this project.

7 And so I support the motion.

8 COMMISSIONER LAURIE: Mr. Nelson, when
9 you indicate that you support the motion, you're
10 indicating that the California Department of Parks
11 and Recreation supports the motion?

12 MR. NELSON: That is correct. I have
13 entered in as an Intervenor representing the
14 California Department of Parks and Recreation, and
15 so that is the position that we support this
16 motion.

17 COMMISSIONER LAURIE: Thank you.

18 MR. RATLIFF: Mr. Chairman, may I just
19 comment briefly on the last set of comments?

20 HEARING OFFICER BOUILLION: Very
21 briefly.

22 MR. RATLIFF: The Applicant is in very
23 short order beginning -- they're going to start
24 monitoring air quality in Burney. That's what the
25 letter that you asked the staff --

1 (Parties speaking simultaneously.)

2 MR. ZISCHKE: It might be good for me to
3 clarify on behalf of the Applicant that we do not
4 believe monitoring is necessary, and that that's
5 what our brief said. Our letter said that should
6 the committee determine monitoring is required in
7 response to the statement in the order, we
8 submitted a proposal about what that should be.

9 But we do feel we have demonstrated that
10 monitoring is not required. And yet we do have a
11 proposal, should the committee decide to order it.

12 HEARING OFFICER BOUILLION: Let me ask
13 Ms. Reynolds if she has any comments at this time.
14 I'd also like to ask Mr. Kussow, who is the -- I
15 hope I pronounced that right -- who is the -- with
16 the Shasta County Air Quality Management District,
17 I'd like to ask for his comments after Ms.
18 Reynolds, specifically with regard to the proposal
19 by Three Mountain to begin monitoring the adequacy
20 of their proposal, and any possible value of that
21 proposal should the committee decide to order some
22 sort of monitoring.

23 MS. REYNOLDS: I -- we stand by what's
24 in our papers. Our -- despite the issues that the
25 Applicant's attorney has raised, our consultant's

1 analysis of the met station, her discussions with
2 folks who run the met station has convinced her
3 beyond a doubt that the met data is not
4 representative in any way of the project site.

5 What we're dealing with here is a
6 project that's in a bowl, and we're trying to use
7 air quality data from the left side of the bowl to
8 say what the air quality in Burney is, and we're
9 trying to use met data from the right side of the
10 bowl to analyze the impacts in the bowl. And you
11 just can't do that.

12 And the Applicant and staff keep saying
13 well, you know, it doesn't really matter because
14 the Applicant is saying they're going to offset
15 all their impacts. Well, that may be true for
16 PM10, for which local offsets are proposed, but
17 for ozone, the Applicant is proposing offsets from
18 Anderson, which is more than 50 miles southwest of
19 the project site.

20 So you -- there's this disconnect
21 between saying oh, well, it doesn't matter because
22 we're going to offset all of our emissions, when
23 there is no evidence showing that their offsets
24 for ozone have any effect on the Burney Basin.
25 And that's what we're dealing with here, is

1 whether or not there's enough information under
2 CEQA to analyze the project's impacts on the air
3 quality in Burney, and whether the proposed
4 mitigation for those impacts is adequate and will
5 really address the impacts in Burney.

6 HEARING OFFICER BOUILLION: Mr. Kussow,
7 do you have some comments?

8 MR. KUSSOW: My name is Michael Kussow.
9 I'm the Air Pollution Control Officer for Shasta
10 County. And I'd just like to review a few of the
11 things that have been said here this evening
12 regarding this particular motion.

13 Some of the comments from the Burney
14 Resources Group was that they felt that the
15 monitors located in Redding and Lassen Park were
16 too distant, and providing information that wasn't
17 representative of the area. And I think the air
18 district, as well as the Applicant, has mentioned
19 that the data that's being relied upon is from the
20 Burney area. It is not from Redding or Lassen,
21 except for the case of the oxides and nitrogen,
22 which is only modeled in larger metropolitan areas
23 because essentially that particular pollutant is
24 being emitted from combustion sources.

25 So to take a larger populated area and

1 use that as a default estimate of the emissions in
2 a less populated area like Burney is a very
3 conservative way to look at that data. Otherwise,
4 all of the rest of the data was taken from actual
5 monitoring done here in Burney.

6 It was in previous years, and the Burney
7 Resource Group does question why that would be
8 reliable data. And we provided to the Commission
9 a letter recently with our response to the motion,
10 indicating that we feel that the data in Burney
11 that we took back in those early years is still
12 very conservative and representing the project
13 area conditions.

14 And the reasons for that is that we've
15 seen a general downward trend in PM10 emissions in
16 Anderson and in Redding over the period of time
17 since 1992, with the evolution of more modern
18 wood-burning devices and people's response to
19 that. So we would expect the same sort of
20 phenomenon here in Burney, and we don't have any
21 reason to believe that that would have a different
22 pattern.

23 The Applicant has brought up some things
24 this evening which I think the district would have
25 to agree with, regarding the data that is required

1 by the EPA guidelines. The Burney Resource Group
2 mentioned that they would like to have three years
3 of data, when if you look at the federal
4 regulations they do require only one year's data
5 that is representative of the local conditions.

6 So what the air district is saying is
7 that we think that the data that we collected here
8 in Burney during the early -- earlier years, was
9 providing this one year's data that is
10 representative.

11 If you look at the significant impact
12 levels that have been examined by the two
13 techniques by the Applicant, in even requesting
14 monitoring to be done the district would have --
15 have to again agree with the Applicant's method in
16 taking a conservative approach in this regard.
17 The two methods that you can use would be the more
18 refined modeling, which would require the -- the
19 good met data that the Burney Resources Group and
20 others would like. And I think the district is in
21 agreement that, you know, the data from that met
22 site is not ideal, there are some faults with it
23 that -- and, you know, if we had a better location
24 and better data we would certainly use that.

25 However, the other method that can be

1 used is a screening modeling approach, which the
2 Applicant also -- to see what kind of difference
3 would occur in a screening technique that would
4 look at worst case conditions under all
5 meteorological conditions. And this -- this
6 particular method looks at different stability
7 classes of your weather data, and tries to define
8 what the maximum concentration level would be
9 under all of those situations. And assuming that
10 the wind would always be in the direction of the
11 receptor.

12 And if you look at the two methods that
13 have been provided by the Applicant, the maximum
14 impact levels that are predicted are so far below
15 what is defined in the significant impact level of
16 the federal permitting regulations that, again,
17 the district would have to conclude that
18 additional monitoring is not required. And the
19 regulations allow for that.

20 Looking at the two different methods,
21 you come up with even these significant levels
22 that are defined, the highest one that is
23 predicted is PM10 emissions, which are only
24 roughly half of this significant impact level.

25 So I think the district would be

1 supportive of not requesting additional monitoring
2 information.

3 There was a question by the Commission
4 as to what value that would provide if the
5 monitoring was to go forward. And this kind of
6 relates to Mr. Nelson's comment. He seemed to be
7 very interested in determining the effect of the
8 project, and mentioning that we need the baseline
9 data in order to do that.

10 And in reality, I think that, you know,
11 the project impacts are kind of a separate issue
12 from the baseline air quality data. You have to,
13 by federal regulation, use EPA approved modeling
14 analysis to predict what the project's impacts
15 are. The background air quality is another issue,
16 and I think, as I mentioned earlier, we have a
17 very conservative viewpoint of what that
18 background concentration -- what those background
19 concentrations are.

20 The Applicant has been assuming in its
21 proposal that the Burney area is in a non-
22 attainment area for ozone, when in actuality the
23 monitoring that we did in the late eighties and
24 early nineties did not show that we had an ozone
25 problem in the Burney area. But the Applicant is

1 agreeing to offset those emissions, assuming that
2 we would be.

3 The data for the PM10 emissions is
4 clearly above the state standard for ambient
5 health standards in California. So there is no
6 question that the area is violating those
7 standards, and the Applicant must offset those
8 emissions.

9 So further monitoring would really only
10 confirm the fact that we are still continuing to
11 exceed the California standards for PM10. We are
12 roughly one-half of the federal PM10 standards
13 here in Burney, so we are in no danger of
14 violating the federal standards. And as I
15 mentioned, again, the ozone non-attainment
16 assumption is a very conservative one.

17 So in my view, I don't see the purpose
18 in requesting the additional monitoring,
19 especially if the significant levels that are
20 predicted by the two ways of looking at the
21 project impacts are still predicting far below the
22 significant levels.

23 That would be the end of my comments.

24 PRESIDING MEMBER KEESE: May I ask a
25 question. Is PM10 seasonal?

1 MR. KUSSOW: Yes, it is very much so in
2 the Burney area. I think if you came here during
3 the spring and summer months you would see that
4 the Burney area does not have too much of a PM10
5 problem, and most of California tends to be that
6 way. If you have open burning and a lot of
7 agricultural burning, as well as wood stove use,
8 you will see the highest PM10 levels during the
9 core burning months.

10 So that does change quite dramatically
11 in Burney.

12 PRESIDING MEMBER KEESE: I've heard the
13 two discussions of fire -- fireplaces and the dust
14 from roads. Are you indicating that most of the
15 incidents in which the PM10 is violated are
16 winter, when -- when it's fireplace? Is that --

17 MR. KUSSOW: Well, of course, you know,
18 there's going to be PM10 all year round, but
19 they're going to be much lower in the spring and
20 summer months. The very core months are going to
21 be in the dead of winter here in Burney, December,
22 January, February. That's mostly in our study,
23 years ago, we found that that was mostly from the
24 impact of the wood burning devices.

25 HEARING OFFICER BOUILLION: Thank you.

1 PRESIDING MEMBER KEESE: Marcie, is your
2 -- is your greatest concern PM10 in the winter?

3 MS. CROCKETT: I think the heaviest PM
4 concentration is in the winter. I'm not sure that
5 we can arbitrarily say summer is -- is great. I'm
6 not sure. And because we have a lot of rotation
7 of crops now, with plowing, and you know what that
8 does. And so we have a lot of that, but I think
9 for the most part, most people would feel that the
10 winter quality is the major problem. And we do
11 have the severe inversions here.

12 PRESIDING MEMBER KEESE: Thank you.

13 I have one more technical question that
14 I don't know who to address. But we heard two
15 things that they -- the current monitoring station
16 is above the smokestack, and I guess a proposal
17 would be for ground level monitoring.

18 Which -- we have -- we have a problem
19 with either one. Something that's 300 feet or 400
20 feet above is -- is above, and something that's
21 140 feet below is -- which is more valid, or is
22 there -- could staff --

23 MR. RATLIFF: Commissioner, I'll give it
24 a try, and if I fail then someone else can save
25 me.

1 But I think you're talking about the
2 meteorological data that's gathered at the Brush
3 Mountain station. And that -- what we've heard
4 tonight is that the Applicant has done something
5 different to make sure that even if that data is
6 problematic in some way, that they've covered
7 their bases.

8 What they've done is basically screen
9 modeling, using worst case assumptions for all
10 meteorology, which is contemplated by the federal
11 guidelines. So you can use a screening -- you can
12 do either the kind of meteorological data
13 dispersion modeling that the Applicant also did,
14 or you can do the screen modeling. The Applicant
15 did both.

16 And so what they're basically saying is
17 we're covered because of the dispersion modeling,
18 and the indication of no significant impact
19 through the dispersion model -- through the screen
20 modeling, which assumes worst case meteorology.

21 PRESIDING MEMBER KEESE: Applicant okay
22 with that answer?

23 MR. ZISCHKE: Well, I guess from our
24 viewpoint --

25 PRESIDING MEMBER KEESE: Let me say --

1 I'm trying to focus on PM10 here. I'm trying to
2 say if we're going to -- if the committee is going
3 to consider PM10 modeling, which seems to be what
4 is focusing in --

5 MR. RATLIFF: Those are two different
6 things. The PM10 modeling is -- is something that
7 the Applicant has agreed to do in Burney.

8 MR. McFADDEN: Perhaps.

9 MR. ZISCHKE: We have submitted a
10 proposal in response to the committee's order.
11 But we --

12 PRESIDING MEMBER KEESE: If the
13 committee would order it, you would do it. Okay.
14 That's -- that's --

15 MR. McFADDEN: Commissioner, if I may,
16 because I'm getting confused and it's causing an
17 argument at our table.

18 There seems to be confusion between
19 monitoring and modeling. Monitoring is a data
20 collection exercise in which monitors are placed
21 out and gather air samples and determine the
22 concentrations of the pollutants therein.

23 Modeling is an exercise in computer
24 technology, if you will, wherein mathematical
25 models take data from air monitoring and from

1 meteorological data collected separately, and
2 determine what likely impacts would result. And I
3 think there's been some confusion as to each one
4 of those.

5 In our proposal in our letter, if the
6 Commission should order it, we propose to do air
7 quality monitoring for the winter months --

8 MR. TOTH: At ground level.

9 MR. McFADDEN: -- at -- well, actually
10 not. I think that the proposal is to do it at the
11 same location that it was done in 1990 through '92
12 for comparability of data, and my recollection is
13 that's at the top of the library. But I'm not
14 positive of that.

15 And so --

16 PRESIDING MEMBER KEESE: Actually, that
17 has answered my question.

18 MR. McFADDEN: Okay.

19 HEARING OFFICER BOUILLION: All right.
20 That will conclude the hearing on that motion.

21 We'll turn now to the fourth motion --

22 MR. RATLIFF: Excuse me. You asked for
23 staff's comments on the monitoring, and --

24 HEARING OFFICER BOUILLION: Well, if you
25 have them --

1 MR. RATLIFF: We -- we do.

2 HEARING OFFICER BOUILLION: -- with
3 regard to the --

4 MR. RATLIFF: I'd like to let Mr. --

5 MR. NGO: Good evening, Commissioner,
6 good evening, gentlemen. My name is Tuan Ngo, I'm
7 with the Air Quality Section of the Energy
8 Commission.

9 I have a really brief chance to look at
10 the proposal from the Applicant about the -- if
11 the committee order the Applicant to do the
12 monitor, to do the monitoring with the data
13 collection for PM10. I have a few comments on
14 that.

15 First of all, we learn to see if some --
16 instead of choosing the location of the existing
17 facility, we want to see perhaps a protocol be
18 submitted so that we can recommend a location so
19 that it would do -- it would -- it would do, would
20 collect and reflect the condition of the project
21 before and after operation, just to make sure that
22 we -- we -- if we going to do it, we want -- we
23 want to have a data reliable, and data that --
24 that we don't have to -- to worry about or
25 reference later.

1 Number two comment is if the Applicant
2 is going to go through with this proposal, we will
3 recommend that an independent party be selected to
4 perform the data collection. Again, just to make
5 sure that the data is reliable at a later date.

6 Two technical comment on item number
7 two. If you refer to the -- to the December 15
8 letter. Instead of the sampler would operate for
9 a 24 hour period every third day, we will
10 recommend that either you do it once a day, or if
11 you can do it over the -- if too much money
12 involved, why don't you do it like the way they
13 have already did it in the analysis, where there
14 is once every six day. So we be able to compare
15 apple to apple.

16 Okay. And then another one, and the
17 last one on the technical item would be on the
18 item number three, on the cork fiber. I would
19 like to have an opportunity to look at the
20 comparability of the cork fiber in term of the --
21 the PM10 emission that we are looking at in this
22 area. In other word, we heard about a problem
23 from the Burney Resource Group about the -- the
24 filter, or the instrument that have been plug.
25 And cork fiber may be the cause of one of them.

1 But I am not certain yet. So I will get back to
2 you on the appropriateness of the material for the
3 filter.

4 And that will be it for my comment on
5 the -- on the proposal.

6 HEARING OFFICER BOUILLION: Mr.
7 Hathaway, you have some comments?

8 MR. HATHAWAY: The Commission -- I need
9 to apologize, because when you talk about air
10 quality in the Burney Basin, the citizens become
11 very concerned very readily. And in order for you
12 to understand some of the history is that you have
13 to understand that in 1980 the power plant was
14 sited in Burney, the air quality management
15 district allowed the plant to be sited. There was
16 no EIR required, there was no check on technology.
17 The plant was sited, met all the guidelines. It
18 dropped ash and smoke on the adjoining residences
19 up until '91. The ash was large enough they could
20 be collected on paper plates, because my family
21 collected the ash.

22 So you have to understand that one of
23 the things you talk about, PM10, and you talk
24 about siting additional sources, we become
25 offensive because they've been sited here, and you

1 can go outside tonight and you can see PM10 in our
2 air tonight. And you can breathe it in your
3 lungs. You can smell the smoke, and you can -- it
4 collects on our cars.

5 So when you have a plant sited in '80,
6 Sierra Pacific Industries now operates a
7 cogeneration plant south and west of us, as does
8 -- I think Maine owns it, but it's called
9 Connective, now.

10 So, you know, in our air basin, which is
11 actually not in the Sacramento Valley Air Basin,
12 it's the northeastern air basin plateau, we have
13 three biomass plants cranking out PM10 all the
14 time. The plant between Burney and Johnson Park
15 has -- has cleaned up considerably, and operates
16 much cleaner than its predecessor did. And it's
17 become -- we don't have near the ash fallout, and
18 we don't have near the problem.

19 But PM10 is a problem. We will have an
20 opportunity as citizens to address the hearing
21 process with the Shasta Quality Air Management
22 District, and they're sure that we'll be there,
23 and we will be there. But all we're requesting
24 is, is that we look at baseline data that is
25 current, consistent, and it's using measuring

1 devices that -- that we can agree on, or -- or the
2 committee can feel comfortable with and committee
3 staff can feel comfortable that it's measuring
4 accurately, and it's measuring our basin.

5 And I think Mr. Moore brought up an
6 important point. We're not asking to delay the
7 project with this request. It could run
8 concurrent. It could be collected quickly and
9 we'd have an idea of what is actually happening in
10 Burney Basin, not in Anderson, Susanville, Lassen
11 Park, Brush Mountain, or any of the surrounding
12 areas.

13 MR. ZISCHKE: I have one comment for the
14 Applicant on the monitoring proposal, if I may. A
15 very short one.

16 And that is that we did propose -- we,
17 in response to the committee's proposal, we did
18 say if the committee were to order it, monitoring
19 of -- wintertime monitoring of PM10, we set forth
20 a protocol. I don't know what the timing is, as
21 you take these matters under submission. But that
22 is something that if we were to be ordered to do
23 it, we would want to know -- or not, we would want
24 to know sooner rather than later.

25 Again, it is for wintertime PM10. It's

1 not something we think is needed, as we said, but
2 we have that proposal if the committee decides
3 otherwise.

4 HEARING OFFICER BOUILLION: The
5 committee will take that motion under submission,
6 as well.

7 Now we'll turn to -- we'll turn to Mr.
8 Evans' motion for paving certain roads, and I'd
9 particularly like to ask Mr. Evans if he would
10 direct his attention to the timing of his motion,
11 about whether that should be considered here and
12 now or as part of workshops, or as part of the
13 impact analysis and mitigation analysis in the
14 full hearings, which are yet to come.

15 And I'd also like to know why he thinks
16 the roads he selected are the ones that should be
17 paved, as opposed to others that might be
18 considered.

19 MR. EVANS: I would also like to ask the
20 committee if I may make a few personal remarks
21 after I get done here.

22 Okay, thank you.

23 My proposal really is a very simple
24 proposal. I have a few streets over in Johnson
25 Park that we've been attempting to pave at least

1 since 1984, because in that year I formed a road
2 district, or attempted to, to have those roads
3 paved. And I really -- well, I list all the
4 streets, but you people really aren't interested
5 in them. You can read them off in the -- whatever
6 it is, the motion.

7 Most of the roads that I am speaking of
8 are not public roads. I must admit that. They
9 are rights-of-way that have been granted by
10 property owners in that area, and are now
11 considered driveways by the county road
12 department, I understand. But they -- they
13 generate so much dust during the summer months
14 that it's virtually impossible to see sometimes.

15 This is -- especially has grown worse in
16 the last, oh, several years, ever since Ford
17 changed the design on their engines. For some
18 reason, it seems like a Ford truck going down a
19 road can blast everything for miles around. I
20 don't know what causes it, but it does.

21 So I would like to propose that it would
22 be a little bit nice if somebody would pave the
23 roads. It would cut down on the dust and all that
24 good stuff.

25 I would say, sir, I must sharply

1 disagree with Mr. R. Michael Kussow's letter to
2 Mr. Buell of December the 1st, 1999. This problem
3 has been studied to death and we still haven't got
4 anything done.

5 We can't really go in that area and
6 attempt to put public roads in there. If you did,
7 I think you'd have a revolution on your hands,
8 because you're only allowed -- I think it's 20
9 foot for a driveway, and they want a 60 foot
10 easement for a public road. And those -- those
11 owners up in there, some of them would have to
12 move their houses, they'd have to move their
13 garages. You name it, they'd have to move it.
14 So I don't think that they'll ever go for public
15 roads up in there.

16 And also, it says no member of the
17 Shasta County Air Quality Maintenance Board lives
18 on these streets. Well, I'm sure about that.

19 So anyway, I feel that my approval, or
20 my approach, together with the stove and fireplace
21 plan put forth by Mr. Tuan will do the most to
22 mitigate this PM10 problem, especially in the --
23 in the summer, in my case, and in the winter in
24 his case, and it's the most economical way to do
25 it, and will be the most effective on the local

1 level.

2 Okay. From now on this is personal.
3 No, this is not going to get anybody in trouble, I
4 don't think.

5 All I want to do is wish each and every
6 one of you a very, very happy holiday, a
7 prosperous new year, and I hope that the Y2K bug
8 dies before it gets to your computer.

9 Thank you.

10 (Applause.)

11 HEARING OFFICER BOUILLION: Could I ask
12 the Applicant if he has any response to that -- to
13 Mr. Evans, that is -- that is not included in the
14 written response.

15 MR. ZISCHKE: Well, I second the holiday
16 greetings and good wishes. We agree paving is an
17 important part of PM10 mitigation. We've already
18 agreed to local paving, and we have passed on this
19 recommendation to the county. We're going to work
20 with County Public Works and Air District staff,
21 and we -- we've outlined why we thought it was
22 premature to make a decision right now, but there
23 is going to, you know, we've proposed paving
24 mitigation, and we'll be working with the agencies
25 on that.

1 HEARING OFFICER BOUILLION: Thank you.

2 Mr. Ratliff, do you have any comments
3 that are not included in your response?

4 MR. RATLIFF: No.

5 HEARING OFFICER BOUILLION: Burney
6 Resource Group, do you have any comments? Any
7 additional comments.

8 MS. CROCKETT: My only comment for the
9 group would be on the timeliness. I would assume
10 that this would have to do also with if the plant
11 was certified this would be a condition of
12 certification.

13 I don't think Mr. Evans is asking for
14 paving prior to certification. I'm getting the
15 feeling that maybe staff or Commission is thinking
16 that that is the timeliness problem. That would
17 be my only comment.

18 HEARING OFFICER BOUILLION: Thank you.

19 Mr. Hathaway?

20 Mr. Nelson?

21 MR. NELSON: No.

22 HEARING OFFICER BOUILLION: Ms.

23 Reynolds.

24 MS. REYNOLDS: No.

25 HEARING OFFICER BOUILLION: The

1 committee has no questions. It will take that
2 under submission.

3 That closes the discussion on these four
4 motions. Each of them will be the subject of a
5 written order by the -- by the committee.
6 Hopefully, within the very near future.

7 I'd like to turn at this time, then, to
8 the matter of the scheduling. And we have
9 received a proposed schedule both from the
10 Applicant and from the staff, and I would first
11 like to ask the Applicant to comment on the --
12 both on their schedule, and their schedule vis-a-
13 vis the schedule proposed by the Energy Commission
14 staff, and why one is preferable to the other.

15 (Pause.)

16 MS. MacLEOD: See if I can do as good a
17 job as Mr. Nelson.

18 My name is Ann MacLeod. I'm one of the
19 attorneys for Three Mountain Power.

20 I understand that we're being asked to
21 comment on the staff's schedule, and first I want
22 to say I'm a little reluctant to comment for the
23 first time publicly on the staff's schedule. In
24 the past, throughout this proceeding, we've had
25 the good fortune to be working very closely with

1 the staff, and usually get to check things like
2 this out with them before something is filed.

3 And in this case, as you might know, the
4 project manager for the staff has not been
5 available for the last couple of weeks, so we
6 haven't been able to talk to him about our
7 schedule before it was filed, or to give the staff
8 comments on their schedule. And as the staff
9 schedule was filed without really any explanation,
10 I can only guess that -- why they came to certain
11 conclusions.

12 We -- we worked out a schedule with the
13 staff back in August that was filed at the
14 Commission. And that schedule provided for the
15 PSA, the Preliminary Staff Assessment to be filed
16 at the end of November, which has pretty much been
17 done. It called for the Final Staff Assessment in
18 late January, for hearings in February, and, of
19 course, most importantly from our perspective, it
20 called for a Final Decision by the Commission on
21 this project by June 21 in 2000, which is a one-
22 year statutory deadline for completing the
23 Commission review.

24 It will come as no surprise to the
25 Commissioners that Three Mountain Power is very

1 concerned that the staff's proposed schedule
2 concludes at this point in the proceeding that a
3 Final Decision by June 21 is either not possible
4 or that it shouldn't be the target at this point
5 in the proceeding. Three Mountain Power has been
6 operating on the basis, for some time, that a
7 final decision should be made within the one-year
8 statutory deadline, except in those instances
9 where the delay is either unavoidable or
10 unrealistic, impractical, we are hopeless
11 optimists as far as schedule goes. But we're not
12 totally unrealistic on this subject.

13 We have no reason to believe, and we
14 have had no indication from the staff that there's
15 been any slippage in the schedule in any of the
16 resource areas except air and water. And
17 therefore, we -- we have proposed to the committee
18 that the committee stay on schedule as to all
19 resource areas, and then as to air and water, I
20 want to address those separately.

21 On water resources, Three Mountain Power
22 has understood that the cause of the delay in the
23 staff's analysis for this important resource area
24 has been the shortage of personnel, staff
25 personnel who have been available to evaluate

1 Three Mountain Power's water case. And we thought
2 that this staff problem had been resolved in early
3 November, when I understand that a special outside
4 consultant, or some special other resources became
5 available to the Commission. But it seems to be a
6 continuing source of difficulty.

7 And while we sympathize with the
8 difficulty that everyone at the Commission has
9 faced, given the extreme increase in their
10 workload during the last year, I think it's fair
11 to say from our perspective that the second part
12 of the PSA, which was just released on
13 December 10th, is really the first qualitative
14 feedback that we've had from the staff on water
15 resources. So, in fact, I'm a little -- we're a
16 little uncomfortable, or even kind of embarrassed
17 that some of the issues that you were telling us
18 -- information that you were telling us now, or
19 just -- we were told in the PSA on December 10th,
20 that it's needed to complete your water analysis
21 is just now coming out.

22 But in any event, Three Mountain Power
23 still thinks that we need to make every effort to
24 avoid any further delay, and that's why we're
25 planning on giving you all of the information that

1 is needed to complete your analysis by January
2 7th. I think I differ a little bit with the
3 project manager, who said we'd have it to you by
4 the middle of January, but we really are very
5 hopeful that we're going to have all of that
6 information to you by January 7th, and that should
7 allow you to complete your analysis, we're hoping,
8 by the time that the Final Staff Assessment is
9 scheduled, by about January 20th.

10 And this is where I want to make my
11 appeal to the Commissioners that we're hoping that
12 the Commissioners will assist the staff in
13 dedicating whatever resources are necessary to
14 make that happen on the water -- water issues.

15 In other words, and I guess to
16 summarize, Three Mountain Power is asking that the
17 delay in water not be permitted to cause a delay
18 in the Commission's final decision.

19 On air quality, with respect to air
20 quality issues, we understand that the staff's
21 Final Staff Assessment on air quality is going to
22 be delayed, due primarily to a delay in the
23 release of the preliminary determination of
24 compliance that the local air district is working
25 on. Nonetheless, we still are not prepared to

1 conclude at this juncture that a delay in the
2 Commission's final decision on air is inevitable,
3 although we think it's possible.

4 And given that we think it's possible,
5 we've proposed a schedule which provides that air
6 issues may be bifurcated, and that a possible
7 second phase of hearings be scheduled in March.
8 And we think it's important, just given how busy
9 the Commission is and how quickly people's
10 calendars are booking up, that we set aside some
11 dates in March for a possible second phase of
12 hearings so that we don't lose those spots on
13 people's calendars.

14 The staff's proposed schedule calls for
15 hearings starting in March and concluding in mid-
16 April, and I'm not sure why they felt it was
17 necessary to block out a six-week or so period.
18 Obviously you don't have hearings every day, but
19 even if there was, you know, one or two days of
20 hearings every week, I'm not sure why we would --
21 why staff is thinking that we might need as much
22 as six weeks of hearing time blocked out. And I'm
23 sure they can explain that to us.

24 It appears to me that a two-month delay
25 in scheduling the hearings, that is the staff's

1 schedule calls for hearings to be ended in mid-
2 April rather than in mid-February, which is kind
3 of what we were looking at when we started this
4 process, causes a ripple effect that then results
5 in a scheduled Commission decision on the whole
6 project occurring about two months after the one-
7 year statutory deadline.

8 So I think that summarizes our -- our
9 comments on the staff's proposal.

10 MR. RATLIFF: I'm somewhat disadvantaged
11 tonight because I don't have my project manager
12 with me, and he laid out the schedule. And he can
13 defend the schedule and explain it much better
14 than I can, myself. He is in touch with where we
15 are in our analysis in all the various areas, and
16 he has experience with how schedules actually
17 work, as opposed to how you just write up your
18 target dates and you sort of put your end date at
19 the bottom, and then you work back. I think he's
20 trying to figure out realistically how we can
21 conclude this in an organized manner.

22 There have been resource problems, but
23 that isn't the real problem, I think. The biggest
24 problem that we have is I think an analytical
25 problem. We have, I think we're wrestling with

1 two issues that are actually quite difficult in
2 the context of this case. They're water quality
3 and air quality. And I think when we get to the
4 conclusion of this case really depends on how
5 rapidly we get to a conclusion of those two
6 issues.

7 Staff's principal concern is those --
8 those two issues have to be done right. They
9 can't be rushed. We have to know what the impact
10 is and feel good about our analysis before we're
11 done. And I think, looking at the schedules, that
12 the staff's schedule looks quite realistic.

13 I would like to ask the district if they
14 think -- when they think they're going to deliver
15 their preliminary determination of compliance. We
16 have it dated for January 20th. Is -- I'm sorry,
17 for -- that would be the -- I'm sorry, the
18 preliminary DOC is January 7th on our schedule.
19 Is that still on, in your view?

20 Oh, I'm sorry. December 22nd is when
21 we've got you scheduled for preliminary
22 determination of compliance.

23 MR. KUSSOW: Mike Kussow, again, Shasta
24 County Air Quality.

25 We had prepared a letter to deliver to

1 the Commission this evening, if you would accept
2 it at this proceeding; otherwise, we would forward
3 it to Mr. Buell. But basically, the letter said
4 that we feel we do not have the ability to meet
5 the December 22nd date, but we will do -- make
6 every effort to finalize the PDOC by the January
7 7th date that you have scheduled for your
8 workshops.

9 And so the status is that we have been
10 working very aggressively on the conditions, the
11 draft conditions for the authority to construct a
12 permit which must accompany that preliminary
13 determination of compliance document, and we feel
14 that we will be going through that process in the
15 next couple of weeks. But it will take us that
16 long to finish that conditioning.

17 We've had a few late arriving issues, I
18 guess, that have come up with the -- some of the
19 motions that you've been dealing with this
20 evening, so we have considered those in our PDOC
21 document, including some discussion of the
22 emission offsets that have been an issue to some
23 degree this evening.

24 So we really do need to work those into
25 the document and finish those by the January 7th

1 date, is what we're predicting right now.

2 PRESIDING MEMBER KEESE: I can ask the
3 question. The question I would have is that
4 January 7th, is it likely that we could get the
5 final within six weeks of that?

6 MR. KUSSOW: Well, I would say, you --
7 yeah, I guess, as someone alluded to earlier, we
8 would be going out with our comment period after
9 we finish that preliminary document, and so it
10 really would depend on the extent of comments that
11 we receive from the Air Resources Board, EPA, and
12 the public. I guess we won't be expecting a lot
13 of comment on this particular project, so I think
14 that would be possible.

15 We would be optimistic, I guess is what
16 I could say. We think that the issues have been
17 pretty well fleshed out here already, and so we
18 could attempt to do that to the best of our
19 ability.

20 MR. RATLIFF: Well, having heard that, I
21 guess the staff's schedule is overly optimistic.
22 We're already not going to make that schedule.

23 Our experience has been typically it's
24 -- the district's doing very well to provide a
25 final determination of compliance within six weeks

1 of the preliminary. That would have to be the
2 best case that you could expect, because they have
3 to wait 30 days to take comments from the release,
4 so then they have a very short turn-around time
5 for the final. Even in the six week schedule.

6 So in my view, I don't know how we're
7 going to modify the staff schedule to account for
8 the fact that we're now going to get the
9 preliminary determination of compliance on the
10 date for which we have scheduled a workshop, but
11 it would move everything back at least a week, it
12 would appear. I would like to re-juggle our
13 schedule to try to see if we can compress it in
14 some way to make up for that late date, but I
15 won't attempt to do so now.

16 I would also like to give Chris Tooker
17 an opportunity to talk about the air quality issue
18 and the timing of the air quality issue, see if he
19 can embellish on what I said.

20 MR. TOOKER: Thanks, Steve.

21 My name is Chris Tooker. I supervise
22 the Air Quality and Health Unit at the Energy
23 Commission in the Environmental Protection Office.

24 One thing I wanted to bring up is that
25 this district is somewhat unique in comparison to

1 other district that we have been working with
2 recently, in that it has the delegation of the
3 federal permitting authority for what's called a
4 Prevention of Significant Deterioration permit for
5 all pollutants for which the district is in
6 attainment, and it also has responsibility, under
7 the NSR program, for issuing its determination of
8 compliance to the Energy Commission. And both of
9 those permits are combined in the same permit, and
10 there may be a number of issues on which
11 Intervenors or others may comment, including EPA.

12 So I think, again, it's very optimistic
13 to assume that we would have a quick turn-around
14 to the preliminary document that the district need
15 to permit, and getting responses to those handily
16 in the six-week period.

17 And also, in the water area, I don't
18 think we should lead anybody down the garden path.
19 I think there are some fundamental questions that
20 our consultants are asking regarding the
21 Applicant's proposal, and their ability to
22 characterize the resource and the impacts on it.
23 And I wouldn't want to lead the committee along,
24 assuming that once we get a set of responses to
25 these questions that we might not have other

1 questions.

2 When we come to the point of
3 fundamentally questioning validity of their model
4 and the assumption that it's based on, those are
5 some pretty fundamental and important questions
6 that are being asked.

7 And so I wouldn't -- I surely wouldn't
8 make a prediction that one set of data requests is
9 necessarily going to wrap up all the issues. So
10 that I think there are a lot of uncertainties.

11 I think in the air quality area we
12 typically do use the comment period on the PDOC to
13 encourage ARB and EPA, as well as ourselves, to
14 comment on the document and then to resolve those
15 issues in a workshop. But again, I don't know
16 what the scope of other issues will be that will
17 be raised by the Burney Resource Group and others.
18 So there's still some uncertainty.

19 I would say in closing that we are very
20 concerned, given recent appeals of licenses from
21 the Commission and PSD permits. We want to make
22 sure to work closely with the district and with
23 EPA to make sure that this PSD permit has all of
24 the "t's" crossed and the "i's" dotted, so that it
25 is not vulnerable to unnecessary appeals in the

1 process. And it's going to take some time to do
2 that.

3 HEARING OFFICER BOUILLION: Ms.
4 Crockett, do you have any comments on the schedule
5 itself?

6 MS. CROCKETT: Yes, I do. I think I
7 better get up here.

8 Okay. The Burney Resource Group has
9 several concerns. We would like that air and
10 water come out as one document, and not
11 bifurcated, just that it would help with the
12 public process in not following several documents
13 at the same time, or different time periods. And
14 it would be difficult to understand the public
15 health impacts of the process if the air element
16 is missing. So we do -- we would really like to
17 see both air and water in one single document.

18 And that is primarily it at this point.

19 HEARING OFFICER BOUILLION: Mr. Evans,
20 do you have anything to add to that?

21 MR. EVANS: I've said enough tonight.

22 (Laughter.)

23 HEARING OFFICER BOUILLION: Mr. Nelson?

24 MR. NELSON: No, nothing.

25 HEARING OFFICER BOUILLION: Mr.

1 Hathaway?

2 MR. HATHAWAY: I agree. I'd just like
3 to see all the documents completed -- it's hard
4 enough for Intervenors to follow the paper trail
5 --

6 HEARING OFFICER BOUILLION: We can't get
7 you on the recording. If I can ask you to repeat
8 yourself.

9 MR. HATHAWAY: Sorry, my ears are
10 plugged up also.

11 It's my concern that I'd like to see the
12 air, water, and all the documents completed, and
13 staff's comments made on those documents as an
14 Intervenor, so that that gives us the opportunity
15 to respond to the project as a whole.

16 My biggest problem is keeping track of
17 the paper that's presented, and making sure we're
18 all on the same page. And I think if we start
19 looking at the air and set it up two weeks, and
20 bring it back in after we've heard the issues on
21 worker safety and transmission lines, and
22 everything else, that then there is a tendency
23 that the public gets that the project's completed,
24 when we haven't even addressed air and water.

25 So I'd like to see all the issues

1 addressed on schedule, and not separated.

2 HEARING OFFICER BOUILLION: Thank you.

3 Ms. Reynolds?

4 MS. REYNOLDS: I have just a couple of
5 brief comments.

6 My experience has been, with other
7 projects, and with this project, too, that as it
8 takes longer for staff or agencies to do their
9 analyses, what gets scrunched in the schedule is
10 time for Intervenor and the public to review
11 documents. And that happened here where the PSA
12 came out and boom, a few days later we were
13 supposed to have digested this hundreds of page
14 document and be prepared to discuss these at
15 workshops. That's, you know, given the time it
16 takes for agencies to prepare these, it's not
17 reasonable to expect us to be able to digest these
18 -- these intensive documents as quickly as we have
19 been expected to.

20 And so I would just ask that, you know,
21 if, for example, the PDOC is going to slip, that
22 -- say, for example, it comes out on January 7th.
23 We need some time to look that over and identify
24 issues. We can't just have a workshop two or
25 three, or even four days later, or, you know, at

1 the earliest a week earlier.

2 I also would ask that if the decision is
3 made to bifurcate hearings, which seems like it's
4 heading in that direction for air and water, that
5 there be separate dates listed on the schedule for
6 filing pre-hearing conference statements. For
7 example, on staff's proposed schedule, February
8 1st is set as the date for filing pre-hearing
9 conference statements, but the final FSA for air
10 and water doesn't come out until March 24th. So
11 it seems premature to file a pre-hearing
12 conference statement on those issues when we
13 haven't even gotten the FSA.

14 So those are just my only comments.

15 PRESIDING MEMBER KEESE: Well, I
16 appreciate the statements and arguments of
17 everybody who has argued on this point. And I
18 would like to agree with every one of them.

19 Then I will also say that we are under a
20 mandate to do this in one year. We have -- we
21 have 12 months from the day of filing to do it,
22 and obviously, one of these mandates is going to
23 slip. We're -- maybe all of them. We are on a
24 constrained time path. We try to do 12 months.
25 We'll -- we'll do our best to do 12 months, but

1 we're not going to short-change the Intervenor in
2 their ability to comment, which, while we're
3 taking these motions under submission and the
4 question of the timeliness of the motions is at
5 issue.

6 I think all the motions were very
7 relevant, well prepared motions. So obviously, we
8 have parties here who are paying attention and
9 participating, and that's what we want to keep
10 going. Commissioner Laurie and I will struggle
11 and see what we can do about this schedule.

12 I don't want to prematurely slow us
13 down. But at the same time, I want to make sure
14 that there is full ability of everybody here to
15 participate.

16 Commissioner Laurie, do you have any
17 comments?

18 COMMISSIONER LAURIE: Thank you,
19 Commissioner Keese.

20 I guess a couple points, dealing with
21 both the motions and the schedule.

22 As we have advised, this committee will
23 take under submission the questions of the
24 propriety of the motions. And the committee will
25 analyze whether, in fact, the motions are in

1 order, or whether they are not in order.

2 Regardless of the committee's decision
3 on the motions, I simply wish to extend a personal
4 thanks to all the parties tonight. It is
5 understood that we have a ways to go. We have a
6 good ways to go. However, I would suggest to you
7 that if you all handle yourselves in the manner
8 that you did tonight, then we will get through
9 this process in an orderly manner. I found all
10 parties presented their arguments in an
11 extraordinarily proper manner, and I thank you.

12 On the two issues, the committee may, in
13 fact, determine that the motions were not in order
14 for procedural or other reasons. But workshops
15 are most likely in order. And they will have to
16 be included in the scheduling, as well.

17 So I can tell you that when the
18 committee looks at the scheduling, we want to make
19 sure that the issues are properly fleshed out
20 before the evidentiary hearings. And if that
21 takes additional workshops, especially in those
22 two items, then we will be considering that. I
23 think that is the best mechanism for getting the
24 issues and the facts before us.

25 HEARING OFFICER BOUILLION: We've come

1 to near the end of this hearing, but we always ask
2 for public comment at the end.

3 We probably, with the size of this
4 group, won't have to limit your time, but if I
5 could just have an indication by a show of hands
6 if there are members of the public who have not
7 had an opportunity to comment on any of the things
8 that have been discussed tonight. Not other
9 matters that are -- may be relevant to the siting
10 of the power plant, but that were not discussed,
11 such as transmission lines.

12 But if you have comments on what was
13 discussed, does anybody have -- wish to have
14 something put on the record?

15 All right. I understand a Bob Scholls
16 would like to speak. If you would please come up
17 here so we can all hear you. And then the other
18 gentlemen would come up, also. At the conclusion
19 of that he could make his comments known.

20 And Mr. Scholls, if you would identify
21 yourself, and who you represent.

22 MR. SCHOLLS: I'm Bob Scholls, and I
23 represent myself. However, I did join the Burney
24 Resource Group for support, and anything else I
25 can do to help them, that's why I joined their

1 group. And I think their group has grown
2 throughout the months, and I want to thank all the
3 residents of Burney that are here for the first
4 time to learn about the process.

5 And there's plenty that you can do, as
6 you can see. Any of these Intervenors here, you
7 don't see any attorneys sitting on this side.
8 Hopefully, we won't have to, but you never know if
9 that's a possibility.

10 I do want to say one thing to the
11 Commission here that they were talking about the
12 PM10 pollutants, that we at the present time have
13 four of the top ten polluters in Shasta County
14 right here in the Burney Basin. And this will
15 make the fifth one. So that's quite a bit for
16 this little basin.

17 Weeks ago, in our newspaper, the Burney
18 Water District sent a letter to the Applicants
19 asking -- asking them to go dry cooling. I think
20 that's been turned down, I haven't heard. But
21 they're no water use, no waste water, wouldn't
22 have to have any percolation ponds, and there
23 would be no steam blow-off, which where's all that
24 going to go? It's going to go up into the
25 atmosphere and make more fog in Johnson Park.

1 So I'd just like to thank all the
2 Intervenors. I think they're really working hard,
3 and we're going to do that.

4 Yuba City, the desert, and the Bay Area,
5 500 megawatts, they've all gone dry cooling. They
6 must've felt -- somebody felt that was the best
7 way to go, and that's my belief. That's why I
8 joined the group. I'd like to see this plant go
9 dry cooling. They want to be a good neighbor,
10 that's the way to be a good neighbor. Go dry
11 cooling, and you don't have to go through all this
12 that you're going through.

13 Thank you very much.

14 MR. RODRIGUEZ: My name is Michael
15 Rodriguez. I represent myself, as well as the
16 Shasta County Reform Party.

17 I have a personal note first, that I'm
18 very surprised that Bob and I agree on something.
19 It blew my mind.

20 (Laughter.)

21 MR. RODRIGUEZ: When I was in college
22 and when I was in high school I learned two very
23 important things, and that's without water and
24 without air, the human body will die. I was born
25 here, I came home here in '89, I've been here

1 constantly ever since. I want to raise my
2 children here. I don't want them polluted. I
3 don't want their water polluted. I want them to
4 be able to breathe clean air. Otherwise, I
5 would've moved them to Los Angeles or San
6 Francisco, or Sacramento, or -- where should I
7 stop.

8 All those places where they have power
9 plants, and huge pollutants, those things happen.
10 Their children get polluted, their air gets
11 polluted, their ground gets polluted, people die.
12 I'm not a politician. I'm not a great public
13 speaker. But I truly believe that the people of
14 Burney think that these things are important, and
15 that you folks really should look on this.

16 And I also believe, like over here, I
17 can't remember the gentleman's name, he's from
18 Shasta County Air Resources Board, I remember a
19 few years ago, he come up here with Francine
20 Sullivan to tell us that wood stoves were going to
21 be the end of us all. And now he's over there
22 telling me that we could sustain a power plant
23 that's going to pollute.

24 I'm not a rocket scientist, but the
25 arithmetic doesn't add up.

1 Don't know what else to say.

2 PRESIDING MEMBER KEESE: That will
3 conclude this hearing, and I thank everybody for
4 their participation and their cooperation in
5 letting us expedite this and get it done in a
6 timely fashion.

7 Thank you all.

8 (Thereupon, the hearing was concluded
9 at 9:15 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Hearing, nor in any way interested in the outcome
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 30th day of December, 1999.

DEBI BAKER

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345